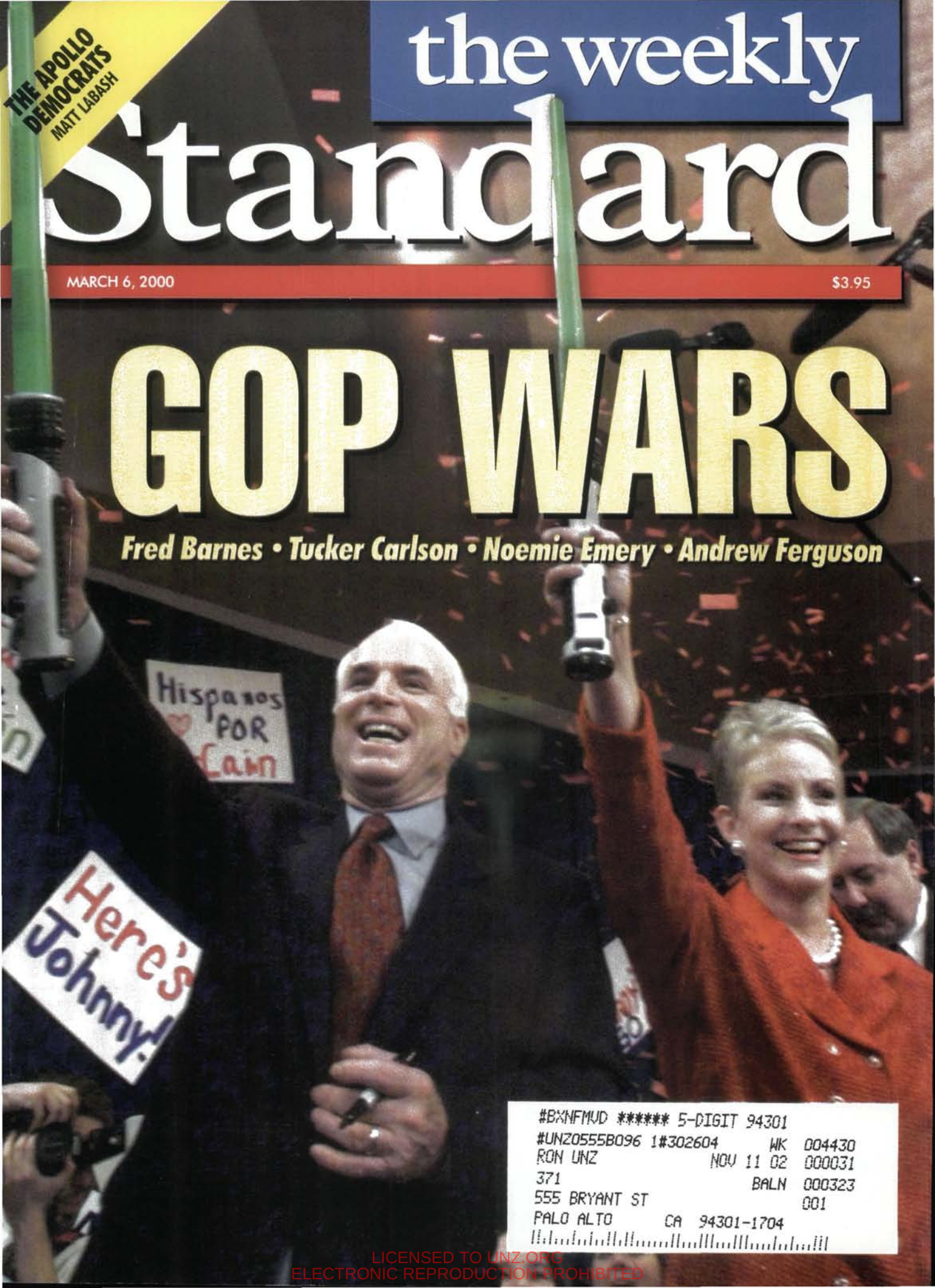
the weekly
Standard
MARCH 6, 2000 $3.95

THE APOLLO DEMOCRATS
MATT LABASH

GOP WARS

Fred Barnes • Tucker Carlson • Noemie Emery • Andrew Ferguson



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ANY FEDERAL LEGISLATION that restructures America's electric industry must embrace two fundamental principles. First, it must be deferential to the long standing prerogatives of the States. Second, it must be truly deregulatory and constrain the appetite of federal regulators to regulate. H.R. 2944 as reported by the House Subcommittee on Energy and Power now embodies these two crucial principles. ■

Respect for the States and Limits on Federal Regulation—
The Key Principles Underlying H.R. 2944

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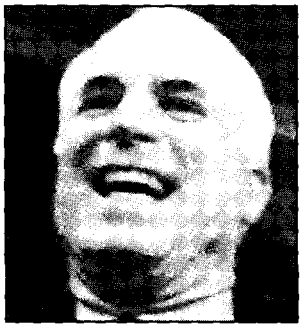

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the weekly Standard

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Impeach the Historians!

C-SPAN recently surveyed 58 American historians and asked them to rank the 41 presidents in each of 10 categories of "presidential leadership." As has been widely reported, Bill Clinton, overall, finished right in the middle of the pack at number 21. As has been even more widely reported, Clinton ranked dead last in the "moral authority" category (Monica Lewinsky, you see) and 36th in "relations with Congress" (the Lewinsky-inspired impeachment).

Our president is famously concerned with his place in history, of course, so THE SCRAPBOOK is sure it knows what Clinton did with these numbers the minute they were publicized on February 21: He tried to figure out how he would have done if Monica Lewinsky had been irrelevant to a judgment on his term in office. Most Americans already think Monica Lewinsky is irrelevant to a judgment on Clinton's presidency, after all. The historians are kinda behind the curve.

Here's what the president must have discovered about himself. If you remove Lewinsky from the calculations, and consider the historians' rankings on only the remaining eight categories of performance, Clinton did remarkably well. Where "pursued equal justice for all" is concerned, for example, Clinton ranked fifth—ahead of Thomas Jefferson, who wrote "all men are created equal," and James Madison, who wrote the Bill of Rights. And if you add that remarkably boneheaded assessment to the historians' similarly boneheaded overpraise of Clinton in most of the other seven remaining categories, you get this: Bill Clinton is the 14th best president we've ever had. Better than James Madison, James Monroe, and both the Adamses—and almost as good as Ronald Reagan and Andrew Jackson.

Next January we'll get a brand-new president, our 42nd. Now then: Where do we go to vote for a set of new historians? ♦

Aloha Racism

For many years now, the state of Hawaii has authorized its "Office of Hawaiian Affairs" (OHA) to disburse substantial sums of money—derived in part from general tax revenue—exclusively for the benefit of people who trace their ancestry to the pre-1778 inhabitants of the Hawaiian Islands. Hawaii has defined that qualifying ancestry by reference to its citizens' racial "blood quantum." And Hawaii has prohibited anyone without the requisite blood quantum from voting in statewide elections for the OHA board of trustees. It's been the only undisguisedly racial voting qualification any state has dared have on its books since the Fifteenth Amendment was enacted in 1870.

And now Hawaii's gonna have to knock it off. Last Wednesday the Supreme Court invalidated the state's Hawaiians-only voting restriction. Writing for a 7-2 majority in *Rice* v. *Cayetano*, Justice Anthony Kennedy summarily rejected the notion—advanced by Hawaii and endorsed by the Clinton Justice Department—that "exceptions" to the Fifteenth Amendment might allow such a racist scheme. There are no exceptions to the Fifteenth Amendment, Kennedy made plain. Its mandate is "explicit and comprehensive" and Hawaii's violation of that mandate has been "neither subtle nor indirect." End of story.

Almost, that is. Two things are notable about the *Rice* decision, both of which suggest that the issues it raises will remain with us like a pox for years to come.

First of all, *Rice* makes clear that there are two sitting justices of the United States Supreme Court—the dissenters here, John Paul Stevens and Ruth Bader Ginsburg—who think it is sometimes okay for a state to restrict its ballots to people who can certify that they carry the chromosomes of a preferred race. Which is a disgrace and an embarrassment. And should be enough to remind us that it really does matter who nominates judges to the bench. The president we elect this year may nominate as many as three Supreme Court justices—and thus fashion a new majority.

Also, alas, we should remain conscious of the fact that even the right president, nominating the right judges, is no guarantee that our highest laws will be obeyed. Within hours of the *Rice* decision, public officials in Honolulu were "reassuring" reporters that only the state's voting scheme had been struck down. In other words, Hawaii's race-specific spending programs—none of which was challenged in *Rice*, and all of which violate the Fourteenth Amendment—will continue unabated. Bottom line: Where race is concerned, we live in a country where you've got to sue, over and over and over again, to get the government to obey the Constitution. ♦

Giving Dirty Politics the Old College Try

According to a *Newsweek* story, campaigns for student office in our nation's colleges and universities have gotten divisive, corrupt, and occasionally violent. Ballot-stuffing took place at Duke University; a fake e-mail

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accusing some candidates of being racist and homophobic circulated at UCLA; and at Portland State, election committee members' cars were vandalized. "Nixon's dirty-tricks squad would fit in nicely at many college campuses," the article says. And who is to blame?

Besides low voter turnout offering an incentive to cheat, *Newsweek* reports that, "Adult politicians get a share of the blame, too, for introducing students to tactics like attack ads and impeachment." So the corrupter of our collegians' civic virtue is not, say, Clinton, but those pesky House Republicans who came up with the *tactic* of impeachment? Give us a break. ♦

Guns and HUD

The Department of Housing and Urban Development has reported that residents of public housing are more than twice as likely to be affected by gun violence as the population nationwide. You might think this is an indictment of public housing, but, no, it's part of HUD's branching out into gun control. In December, President Clinton expressed his interest in having HUD sue gun makers to force them to make safer products. Since then, the administration has used the threat of a federal lawsuit to bully gun manufacturers into settling the 30 suits brought against them by municipalities across the country.

It's no surprise, then, that HUD's report, "In the Crossfire: The Impact of Gun Violence on Public Housing Communities," reads like an outline for a future trial brief. Stressing the department's "unique responsibility to ensure that residents of areas assisted by Federal housing funds live in decent and safe neighborhoods," the report concludes "that public housing residents are suffering greatly from the effects of firearm-related crimes and in numbers out of proportion to their overall representation in society as a whole."

Like a trial lawyer angling for astronomical punitive damages, HUD explains that "the damage imposed by gun violence goes beyond the lives lost and injuries inflicted. . . . Often, children exposed to gun violence present symptoms of post traumatic stress disorder similar to those observed in children exposed to war and major disasters."

But there's a problem at the very root of the HUD argument. Crime rates are higher in the inner cities where most public-housing projects are located. A better measure would compare crime rates in public housing with private housing in similarly poor neighborhoods. And guess what? HUD did just such an analysis, although it wasn't touted by the media or in HUD's press release. Inside the report we find that "the rate of violence victimization for persons receiving housing assistance is not significantly different from those persons residing in rental housing with similar income backgrounds."

No surprise really: Rather than seriously talk about the link between violence and poverty, the Clinton administration has created a stalking-horse to destroy a disfavored industry through litigation. ♦

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Casual

Sign Language

Here in Washington, up Connecticut Avenue, past Dupont Circle, there's a business with a sign that reads "Academy for Educational Development." As near as I can figure, that means it's the School for School School, and every time we drive by, my wife and I invent parallel names we'd like to see: the Union of Amalgamated Federations, for instance, or the Fraternal Brotherhood of Siblings.

On L Street, just around the block from The Weekly Standard, another sign of twisted syntax hangs. There, above the doorway to a charter school that specializes in painting and sculpture, is emblazoned the motto: "Speaking to Access through the Arts." You have to roll it around on your tongue a little to extract the full flavor of antinomian absurdity—a robust, nutty taste, with just a hint of flowering paranoia. "Speaking to Access through the Arts." Several magazines have their offices down in this part of town, and I sometimes imagine the copy editors forced to scurry by every day, pulling at their thinning hair and whimpering, "How long, O Lord, how long?"

But last week, driving up 16th Street, I saw a sign that struck me as less funny. The city's department of recreation has posted outside its offices the notice "Customer Service is Recreation Priority One." Listen for a moment to that sentence: "Customer Service is Recreation Priority One." It's not bad English, because it's not English in the first place. What it is, really, is bad German: five nouns trying to sort themselves into sense, with only the little copula of "is" to help them.

Where did all the noun appositives come from? I don't remember that it used to be this way, but these grammar-problem multi-word noun piles are everywhere nowadays. A little further up 16th Street sits an "Education and Life Quality Center." "The Notre Dame University Press St. Thomas Aquinas series," I read in a journal the other day. "The multi-nation land mines task force," I saw in a newspaper last month.

It's as though we've forgotten that English has prepositions: *to*, *from*, *at*, *for*, *with*, *by*, *through*—that huge set of

case markers we had to develop because our language is basically a Germanic vocabulary jammed into a Romance grammar. Try explaining to a Spanish speaker why we need to distinguish not just *in* from *on*, but *unto* from *toward*—and forget about explaining what it means when we string prepositions together. The novelist David Carkett composed an example that's worth offering any non-native speaker who boasts of his English: A little girl asks her father for any bedtime story except *Winnie-the-Pooh*—and when she sees him return with *Winnie-the-Pooh*, she cries, "What did you bring that book I don't want to be read *to out of in for*?"

An easy language English is, no one ever said. You want epigrams? We got grammar squeezed down microscopic: "Of thirty years I gave ten years to rhyme," the poet J.V. Cunningham wrote about his wasted efforts. "That thus time should not pass, thus passes time." You want the grandeur that was Rome? We got Milton, who writes more latiny Latin in English than the Romans managed in Latin. We can even do that endless prose of Seneca, the sentence in which example is piled on example, apposition on apposition, imperceptibly shifting ground until anything connects with everything, and though you're sure that somewhere there must be a flaw, still the sentence pushes on until it sharpens suddenly into a point—like an elephant, traced from tail to tusk.

But it's all English. Even when it's wrong, it's still connected to the deep stream of the language. Mistakes sometimes get made leaving participles dangling. Other mistakes come from a writer forgetting that those participles, when used as nouns, need not subjects but possessives. But these are, in a sense, mistakes that the language itself tempts us to make—that are uniquely English errors.

More and more, however, we are surrounded by English that isn't English, even when it's grammatically plausible. "The multi-nation land mines task force" isn't wrong, exactly, but it has lost touch with the language. It is how a non-native speaker, someone who knows English but doesn't *feel* it, might compose a sentence—except, of course, that it was written by a person whose native speech is English.

No wonder hardly anyone reads poetry anymore. If you don't hear something wrong in "life quality center," you're not going to get far with "sheer plod makes plough down sillion shine." We've reared up in America a generation of monoglots who are foreigners to their own language. "Customer Service is Recreation Priority One": It's enough to make one enroll at the Academy for Educational Development or join the local charter school in trying to speak to Access through the Arts.

J. Bottum

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McCain the Patriot

Noemie Emery's superb article on John McCain's attraction resonates ("Ask Not . . ." Feb. 21). For one of the very few times, I feel that a journalist has articulated McCain's appeal to me. I am a 30-year Democrat (the last Republican I voted for was also the first, Charles Goodell in the U.S. Senate race in New York in 1970), but as with millions of others the "Patriot party platform" goes directly to our core. We will cross party lines and vote for McCain not because of his résumé, which we admire, but more for his long history of thoughtful outspokenness (e.g., Bosnia), which reveals someone who—seemingly unlike the other candidates out there today—actually thinks about America's role in the world. Reagan, for whom I never voted, also had this and it was one of his great virtues, worth vastly more than all the Clinton policies I support. Gore, Bush, and Bradley are all running for governor of America. And in light of the stench of the Clinton administration, there is no way that I could ever pull the lever for anyone associated with it. As for W., while it's okay for the Ivies to admit legacies, the Oval Office needs a higher standard. But it's not just McCain: Certainly he's more charismatic, but faced with the same alternatives, I'd also vote for Richard Lugar, Colin Powell, Bob Kerrey, Mario Cuomo, and a host of others.

Gene Salorio
Storrs, CT

As a loyal reader and subscriber to The Weekly Standard almost since its inception, I have generally enjoyed your magazine's fresh, timely coverage of the American political scene. On occasion, the magazine has veered off the conservative path to push for this or that dubious cause (Colin Powell for president, Teddy Roosevelt and "national greatness" conservatism, China as the new Evil Empire, Kosovo as a great foreign policy triumph), but for the most part it has maintained a principled conservative outlook.

But with respect to its apparent advocacy of Sen. John McCain's presidential candidacy, The Weekly Standard has simply gone too far. To portray McCain as (a) the ideal anti-boomer, anti-Clinton candidate (David Brooks, "The Anti-Boomer Candidate," Feb. 21); (b) the proud heir to the "Patriot party" tradition of Alexander Hamilton, JFK, Ronald Reagan, and (of course) Teddy Roosevelt (Noemie Emery, "Ask Not . . ." Feb. 21); and (c) the righteous insurgent railing against the entrenched Republican Establishment (William Kristol and David Brooks, "The McCain Insurrection," Feb. 14) is selective reporting at best, complete fantasy at worst. What has become increasingly clear to rank-and-file conservatives is that John McCain is no longer one of them. By emphasizing anti-constitutional campaign finance "reform," by pointedly rejecting supply-side cuts in marginal income tax rates, by adopting Clinton-Gore-style rhetoric on the use of the budget surplus, and by waffling on abortion policy, McCain has painted a very clear picture of himself. No wonder that Democrats and the media have flocked to him, while Republicans have rejected him in state after state. To pick up on the senator's much-used *Star Wars* analogy ("I'm Luke Skywalker fighting his way out of the Death Star!"), it's evident that McCain has gone over to the Dark Side.

That The Weekly Standard has determinedly ignored McCain's numerous shortcomings makes me fear that it, too, has joined forces with the bad guys—in this case, the mainstream media. If I want to hear unabashed hero worship concerning Sen. McCain, I can tune in day or night to the likes of Al Hunt, Mark Shields, Paul Begala, and George Stephanopoulos. I'd prefer not to read it as well in the pages of a conservative magazine.

David A. Wright
Memphis, TN

I am writing to commend you for the piece written by Noemie Emery on John McCain in the Feb. 21 edition of The Weekly Standard. I thought the piece was very well written, and I especially enjoyed the cogent and succinct way in which the current occupant of the Oval Office was reduced to his proper size when put up against the standards of American greatness. Thank you for your magazine and your contribution to the political dialogue.

Matthew May
Birmingham, MI

DLC is A-OK

After a variety of articles in The Weekly Standard over the last four years grudgingly conceding the New Democratic movement's success in changing the Democratic party, and urging conservatives to get out of denial about it, it's disappointing that you've plunged back into denial yourselves, for no apparent reason other than perhaps an inkling of a coming political obsolescence ("The New Democrats' Wretched Trifles," Feb. 21).

David Tell writes that "the question how (or even whether) liberalism might have gone wrong as a political idea seems not to have concerned the new DLC." In fact, if Kenneth Baer's excellent new book, *Reinventing Democrats*, shows anything, it is that New Democrats from their very beginning have been a movement based in ideas and philosophy. In rescuing a party that had lost its way, New Democrats—as Tell points out—did not focus on campaign cash or mobilizing troops on the ground. They focused on offering new ideas that would modernize the Democratic party. Along the way, they built the policy groundwork for the "rich and happy and peace-

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ful present" you now admit America is experiencing.

Think about how far we have come when a Democratic president argues for fiscal responsibility, free trade, public school choice, higher education standards, the death penalty, the line-item veto, more cops on the beat, less teen pregnancy, and yes, welfare reform. In a Democratic primary battle, the vice president criticizes his opponent for opposing time limits on welfare recipients, opposing the use of military force abroad, and offers a plan for rigorous teacher testing. This is far afield from what Democrats once stood for—and this change would never have happened had New Democrats spent the Clinton presidency "shining the public's shoes and fleeing controversy." They won the battle of ideas by fighting that battle—day in and day out.

When Hillary Rodham Clinton begins her Senate campaign in New York by speaking of "responsibility and enterprise," by announcing that, "I'm a New Democrat. I don't believe government is the source of all our problems or the solution to them," this is a mark of a movement that has succeeded—after decades of exertion—in changing what it means to be a Democrat. When those who once attacked New Democrats now join their ranks, we see this as a cause of celebration. It's called political and philosophical success. After all, didn't an ascendant conservative movement once succeed in converting a former liberal named Ronald Reagan—not to mention one named Irving Kristol?

ANDREI CHERNY
Valley Village, CA

HAIL TO EVERY CHIEF?

GREG CROSBY IS CORRECT that "when we honor all [presidents], we honor none" ("Happy Generic Presidents' Day," Feb. 21). He is mistaken, however, when he says that "Presidents' Day" has been "a bona fide national holiday since 1971." In fact, there is no holiday by that name.

In 1968, Congress passed the Monday Holidays Act, moving some date-certain holidays to the nearest Monday. George Washington's birthday was one of them. Congress did not change its name. In 1971, however, Richard Nixon issued a presidential proclamation—which had no force of law—urging Americans to honor all presidents on that day.

Enterprising commercial interests seized upon the new three-day Washington's birthday holiday to hold three-day sales for used cars and the like. They and the uncritical news media simply inhaled Nixon's proclamation. About all we have left to remind us of Washington on this holiday are comical pictures of him appearing to extol the sales of sheets, pillowcases, autos, and furniture.

Representative Roscoe Bartlett (R-MD) has sponsored a bill (HR 1363)—with 34 bipartisan cosponsors—to reaffirm the holiday as "Washington's Birthday" by requiring that it be referred to as such in all publications and utterances of the federal government. Senators John Warner and Charles Robb of Virginia are co-sponsoring a companion bill. It's a start.

PETER HANNAFORD
Washington, DC

GREG CROSBY WAS EXACTLY RIGHT in deploring the trend that has succeeded in melding two traditional, popular holidays honoring the achievements of Abraham Lincoln and George Washington into one bland, ahistorical generality know as Presidents' Day.

There is another example of cultural revisionism that needs attention and rectification. Every November 11th, the country used to celebrate Armistice Day. For years, most schools and many offices observed two minutes of silence at 11:00 A.M.—the precise moment the cease-fire went into effect in 1918—to honor the Allied victory and the enormous sacrifice of the First World War. Now we call it Veterans' Day, and I doubt that many people have any idea of the November date's historical significance. That's too bad for all of us. Veterans of all our wars surely deserve public recognition of their call to duty, but it shouldn't be at the expense of a great historical memory. We should revive the original honored term and redesignate the day Armistice-Veterans' Day.

And if we still need to do something with Presidents' Day, we could move the apostrophe one letter to the left, change the date to August 27, and celebrate the achievements of a great American jazzman, Lester ("The Prez") Young. It wouldn't have to be a three-day weekend.

BRUCE R. CARRICK
Somers, NY

A BETTER BEOWULF

MARGARET BOERNER'S REVIEW of Seamus Heaney's new verse translation of *Beowulf* is both accurate and thorough ("Heaney's Beowulf," Feb. 21). She is right to point out that Heaney's is a bad translation. I encourage her readers to seek out Timothy Murphy's *Beowulf* translations, which have appeared in the *Hudson Review* and the *Formalist*, to date. Murphy knows large portions of the text by heart, and it shows in his ability to capture the spirit and substance of *Beowulf*. Murphy's may be the best translation of *Beowulf* that has ever been done.

GREGORY JEROZAL
Millersville, PA

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the weekly Standard

Don't Believe *Granma*

It's now three months since little Elián González was discovered lashed to an inner tube three miles off the Florida coast, after a crossing in which his mother and 10 other Cuban rafters died while attempting to reach the United States. In recent days, the case has begun to take on the bizarre coloring of a Latin American novel—packed with ambiguities and surrealism. But the central truth has become less ambiguous with each passing day: Elián's relatives in Miami—the ones who wish to raise him—deserve custody. Whatever the intentions of Elián's father in Havana, Castro's Cuba is not a fit place for the boy. And the Immigration and Naturalization Service was wrong when it ruled that Elián should be repatriated.

Consider the developments of the past week. For one, Barry University president Sister Jeanne O'Laughlin spoke out at length. The liberal nun, who had provided the "neutral" site for a January meeting between Elián and his two grandmothers, gave three reasons why she soon threw off her neutrality and began to plead that Elián be allowed to stay in the United States. First, she believed one of the grandmothers—Raquel Rodríguez, mother of Elián's drowned mother—had wanted to defect. Second, she had reason to think that Elián's father had beaten his late ex-wife. Third, she had discovered that Elián's *father*'s family in Cuba had contacted his *father*'s family in the United States, 10 days before the fatal voyage, to announce that Elián and his mother were on their way. In other words, Elián's father knew and must have approved of his boy's departure for America. This last revelation, if true, scuttles any rationale for sending Elián back under any circumstances.

That's why the left-wing National Council of Churches, which has been agitating for Elián's return to Cuba, was quick to try to discredit Sister Jeanne. Robert W. Edgar, general secretary of the NCC, said "Sister Jeanne has to live in the neighborhood"—as if anything but full-throated advocacy of Elián's remaining in the United States would leave her vulnerable to mob violence in Miami. Given that Sister Jeanne herself comes from this same sliver of the hand-holding left (she calls the golf cart in which she travels her "hug-mobile"), it's unlikely she was thinking along these lines.

Then, in the wake of an exposé of past drunk-driving arrests of Elián's relatives in Florida (which led the Castro government to describe them as "a bunch of drunks"), Elián's father, José Miguel González, allegedly sent a request from Cuba asking that Elián be sent to live with less anti-Castro family members, such as his great Uncle Manuel. We say "allegedly," because when the INS tried to contact Elián's father about the matter, he was incommunicado for four days. That led to understandable speculation that the request came not from him but from the Cuban government.

Putting the Cuban government's behavior together with Sister Jeanne's belief that (a) Elián's father planned his flight and (b) one of the grandmothers wanted to emigrate led some Miamians to a new line of thinking. Perhaps what had looked like inexplicable behavior on the part of Elián's Cuban family—the grandmothers' biting Elián's tongue and grabbing his penis, neither of them a "Cuban custom"; the father's threat to get a gun and start shooting American politicians if he ever got to the United States—was merely a *faked* irrationality for the consumption of the jury that decides on Elián's custody. That is, Elián's family was doing all they could, in the context of a totalitarian society, to keep him out of Cuba. Perhaps the Justice Department thought so, too. It denied José Miguel's request to have Elián move to his Uncle Manuel's house.

The case for returning Elián to Cuba has always depended on an optimistic view of Castro's regime; on a belief that it is no longer a Stalinist redoubt; and on a conviction that it's time for a thaw in U.S.-Cuban relations. Inconveniently for the party of normalization, and coming on the heels of the Cuban government's attempts to manipulate the Elián case, Mariano Faget—the son of a hard-line anti-Communist in the pre-Castro Batista regime, and now a high-ranking official of the Immigration and Naturalization Service in Miami—was arrested on February 17 for feeding classified information to the flamboyant Cuban-American businessman Pedro Font. The FBI affidavits released did not point to an open-and-shut case of spying, as Castro's harshest detractors in Miami said—much of Faget's conduct was consistent with a desire to start a Cuban-American business consortium after his impending

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retirement. But neither was it without relevance to the Elián affair, as Castro's supporters in the American press tried to claim. Elián's two rejected asylum applications passed through Faget's office. José Imperatori, the diplomat at the Cuban Interests section whom the State Department identified as Faget's contact and ordered out of the country, was the man who flew with Elián's grandmothers from Washington to Miami.

Whatever the disposition of Faget's case, it was only the latest in a wave of Cuban spy episodes that began before Elián washed ashore. Ten spies were arrested in September 1998, in connection with Cuba's shootdown of two planes belonging to Brothers to the Rescue, a Miami group dedicated to finding Cuban rafters. The FBI reportedly has 50 more Cuban immigrants under surveillance for suspicious activities.

The Elián case may not be the *cause* of Cuba's bustling espionage activity. But it has certainly provided Castro with a chance to slap around the dissidents who are still trapped in Cuba. Oswaldo Paya of Cuba's Christian Liberation Movement and Hector Palacios of the Democratic Solidarity Party have been arrested. Dr. Oscar Elias Biscet, who was arrested 12 times last year for carrying placards protesting the death penalty, has just received a 10-year jail sentence. The independent Cuban Commission for Human Rights and National Reconciliation has released evidence that 262 dissidents had been detained in Cuba in November and December alone. And lesser day-to-day humiliations continue apace. This month in Camagüey, Victor Manuel García Yaque was expelled from the Camilo Cienfuegos military school for telling a joke about the government. This month in Guantánamo women's prison, Yesenia Rodríguez Aguilar—serving three years for "illegally attempting to leave the country" much as Elián did—was denied medical treatment for a kidney infection and cystitis in an attempt to get her to abort the baby she is carrying. This month in Canaleta prison near Matanzas, the inmate Juan Carlos Carrillo Martínez was beaten to death by authorities. Such outrages are becoming better known in the west, now that the Internet is helping dissidents to break the information monopoly of the Cuban government's propaganda sheet *Granma*.

The reasons for the crackdown are clear. Two-thirds of Cubans were not even born when Castro came to power in 1959. The revolutionary struggles of almost half a century ago are—quite properly—meaningless to them, weighed against the world of terror, penury, and stupidity they inhabit. Fidel has seized on any chance to fire his people up again—even sending to Bolivia for Ché Guevara's body to be displayed as a kind of relic earlier in the decade. So there's good reason to believe that Fidel doesn't particularly wish to have Elián back, and would rather have him at his disposal as a propaganda tool.

And the events of the last several weeks—from the spying to the barrage of propaganda to the interventions to the dubious requests for custody changes—make it clearer that Castro's wishes are the only ones that count here. That's why Elián's case should be decided in an American court, with his relatives making their cases here. It would be churlish to doubt the sincerity of his father's or his grandparents' love for him. Unfortunately, that love doesn't put them in a position to protect Elián from the government under which they live.

—Christopher Caldwell, for the Editors

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Accentuate the Negative

Say this for them: Bush and McCain know how to crank up the turnout. BY ANDREW FERGUSON

Grand Rapids, Mich.

GEORGE W. BUSH can't win. No, I don't mean it that way—Bush could still win the Republican presidential nomination, of course, and maybe even go on to beat Al Gore in the fall. (Maybe.) What I mean is, Bush has reached one of those moments when nothing goes right, when the deck is so thoroughly stacked against him that he can't get an even break.

As a case study, consider the final day of the Michigan primary, which Bush lost, unexpectedly and spectacularly. I refer in particular to what amounts, over the long course of a campaign, to a small event but a revealing one.

Bush arrived in Michigan just as a consensus was congealing among the political class about his victory in the South Carolina primary. He owed the win to negative campaigning, everyone who is anyone said. Most of this came in the form of "negative phone calls," paid for by Bush sympathizers rather than the Bush campaign itself. By contrast John McCain, after a brief descent into negative campaigning of his own, had taken the high road (said the consensus). In his South Carolina concession speech, McCain himself had humbly confessed his devotion to "fighting fair." "I will never dishonor the nation I love or myself," he said, "by letting ambition overcome principle." Shucks.

How remarkable, then—how incredible—that on the eve of the Michigan voting, the Bush campaign accused the McCainites of making "negative phone calls." And not merely negative: The anti-Bush calls, which were pre-recorded, carried the insinuation that George Bush was anti-Catholic, which is a bad thing for anyone to be anywhere at any time but particularly bad for a politician in heavily Catholic Michigan during election season. The text of the call, we later learned, went like this:

> This is a Catholic Voter Alert. Governor George Bush has campaigned against Senator John McCain by seeking the support of Southern fundamentalists who have expressed anti-Catholic views. Several weeks ago, Governor Bush spoke at Bob Jones University in South Carolina. Bob Jones has made strong anti-Catholic statements, including calling the pope the Antichrist and the Catholic Church a satanic cult! John McCain, a pro-life senator, has strongly criticized this anti-Catholic bigotry, while Governor Bush has stayed silent while seeking the support of Bob Jones University. . . .

Reporters from the *Washington Post* and the *New York Times* were put in touch with Bush supporters who had received the calls. The reporters did the interviews, and sure enough, the next day, just as Michiganders were going to the polls, both papers . . . buried the story. The *Post* neglected to mention it at all. The *Times*, however, did run a front-page piece about negative phone calls—calls made by Pat Robertson and the Christian Coalition against McCain. The headline was designed to scare the average *Times* reader half to death. "Evangelist Goes On The Attack To Help Bush," read the headline. (*Evangelical? Attack?* Honey, call the doorman!) "Calls Go To Thousands All Across Michigan," read the subhead. The anti-Bush "Catholic Voter Alert" calls were mentioned in the story's twenty-fifth paragraph, followed by the deflating sentence: "The McCain campaign denied any knowledge of the calls."

A tape of the Pat Robertson calls eventually surfaced as well. The script went like so:

> This is Pat Robertson. Protect unborn babies and restore religious freedom once again in America. Tomorrow's Republican primary may determine whether our dream becomes reality, or whether the Republican party will nominate a man who wants to take First Amendment freedoms from citizen groups while he gives unrestricted power to labor unions. A man who chose as his national campaign chairman a vicious bigot who wrote that conservative Christians in politics are anti-abortion zealots, homophobes, and would-be censors. John McCain refused to repudiate these words. You may hold the future of America in your hands.

The two scripts are worth dwelling on. They share certain similarities. Both are "negative"—an offense to the delicate flowers who monitor the national political debate these days. The rhetoric of both is breathless, as campaign rhetoric tends to be. And both are almost completely true.

Bush did speak at BJU (the school's misleading acronym) as a way of "seeking the support of Southern fundamentalists." One of the many Bob Joneses—Bob Jones II—published "strong anti-Catholic statements." The statements were made in 1982; Bob Jones II died in 1997. And John McCain, a pro-life senator, has indeed criticized "this anti-Catholic bigotry."

Robertson's anti-McCain script is pretty much on the money, too, though the tone is hyperbolic. Sen. McCain's campaign finance reform bill (most versions of it, anyway) would curtail certain forms of political expression heretofore considered protected by the First Amendment, which is why the ACLU opposes the reform. Most political activity by labor unions, meanwhile, would not be curtailed. The line about "anti-

Andrew Ferguson is a senior editor at THE WEEKLY STANDARD.

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abortion zealots" etc. is lifted verbatim from a tirade against the Christian Coalition published in a book by Warren Rudman, one of McCain's national campaign chairmen. And when asked about this quote, McCain declined to repudiate it.

So far, so normal. In fact, this much accuracy in competing pieces of political propaganda is impressive. There are, between the two scripts, only three blatant misstatements of fact. First, Robertson's assertion that the recipients of his call "may hold the future of America in [their] hands" is really out of bounds. They don't. They're just a bunch of people who live in Michigan. Second, Warren Rudman is not a vicious bigot. He is a sanctimonious blowhard, but so are most politicians. And third, McCain's assertion that "Governor Bush has stayed silent" about anti-Catholic bigotry is demonstrably untrue. Bush says he first heard of Jones's statements when they were read to him by Tim Russert on *Meet the Press*. Like John McCain, Bush "strongly criticized this anti-Catholic bigotry."

Peter Steiner

That third misstatement would seem to be more serious than the first two, of course, since it places Bush squarely in the camp of crazies who think the pope is the Antichrist. But this isn't the only difference between the two scripts. The anti-Bush calls were written, paid for, and orchestrated by the McCain campaign. The anti-McCain calls, by contrast, were not made by or paid for or orchestrated by the Bush campaign, but by the Christian Coalition. Even more telling was the response of the campaigns when the calls came to light. The Bushies denied involvement in Robertson's calls, and their denial was true—indeed, any collusion between the Coalition and the Bush campaign would have been a violation of federal law. The McCain campaign, on the other hand, denied any involvement in the anti-Bush calls, and this denial was false.

The denial was one reason the *Times* downplayed the anti-Bush calls. The McCainites issued their first denial Monday night, before the primary voting began, and maintained the denial throughout the next day, while voters flooded the polls. The myth of the "negative" Bush campaign and the "fighting-fair" McCain campaign held firm while the polls remained open. Then Rick Davis, McCain's campaign manager, acknowledged that the calls were indeed the work of his organization. The initial denial, he said, had been in error. By then, of course, the polls were closed.

What kind of effect did McCain's calls have on the primary's outcome? Who knows? During this campaign season, the conventional wisdom about "negative campaigning" has been turned on its head. We are told it suppresses voter turnout; and we are told the campaign in general has been relentlessly negative. Yet voter turnouts are at record levels. Most likely, McCain's calls did little to lift him to his Michigan victory.

But the episode was revealing nonetheless—revealing about his campaign, and about the skepticism the press applies, or fails to apply, to his campaign, and revealing also about the candidate himself. On Wednesday morning, after Davis had admitted the calls were from the McCain campaign, McCain appeared for an interview with David Gregory of the *Today* show. The candidate had apparently not yet been told that the "denial" was no longer operative.

Bush "had allies making calls criticizing you," Gregory said. "You had allies making calls criticizing him."

"No, that's not so," said McCain. "The calls that were made that I—that I had anything to do with—although I didn't. I don't know who paid for them—had to do with pointing out that Governor Bush did go to an institution that prohibits racial dating, that is anti-Catholic. It's clear."

It is? Never mind. With that, the senator returned to the Straight Talk Express, bound for Washington state, ready once again to do battle against the forces of dishonor. ♦

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It's More Than Just a Campaign . . .

There are a lot of ups and downs along McCain's high road. **BY TUCKER CARLSON**

Phoenix, Ariz.

THERE ARE FEWER THAN 24 hours to go before the South Carolina primary when Rep. Mark Sanford rises before a crowd in Litchfield Beach to introduce John McCain. Sanford, a 39-year-old member of the class of 1994, was one of the first members of Congress (and still one of the few) to support McCain's candidacy. Smart, charming, and conservative, he is affluent, popular in his district, and has a terrific-looking family. Mark Sanford has a lot of talents. Gauging the sensibilities of an audience is not one of them.

Tucker Carlson is a staff writer at THE WEEKLY STANDARD.

Voting for John McCain, Sanford tells the crowd, is more than an exercise in civic duty. It is, says Sanford, a lot like what happens in the movie *The Hurricane*. In the film, a group of political activists decides that Ruben "Hurricane" Carter has been railroaded by a racist justice system and convicted of a murder he didn't commit. Carter's supporters are so convinced of his innocence that they move to the town where he has been imprisoned and stage a kind of continuous vigil until he is released. That's what a vote for John McCain is like, Sanford says. A blow for justice.

Sanford doesn't mention that the people who agitated for Hurricane Carter's release were left-wing radicals who lived in a commune. (Or, for that matter, that they were Canadians.) But it's clear that some in the largely white, middle-aged crowd have seen the movie. They look confused.

The candidate himself doesn't do much to reassure them. McCain seems tired, and he delivers his stump speech in an uncharacteristi-

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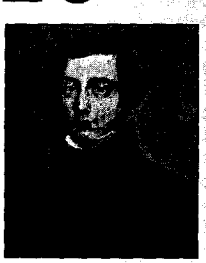

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cally flat tone, as if he has finally grown weary of repeating the same words. Perhaps to add variety, he throws in a new line. In the middle of his usual rap about inspiring the young to pursue causes "greater than their own self-interest," McCain mentions the trip he made last year to Boston, where he received the John F. Kennedy Profiles in Courage Award. Accepting the award with him, McCain remembers, was his good friend Sen. Russ Feingold, a liberal Democrat from Wisconsin.

For about five different reasons, this is not the sort of thing Republican candidates normally tell South Carolina primary voters. McCain compounds it by making an explicit pitch to Democrats and independents. As he leaves the stage, the music starts, loud as always. It's not rap—the campaign saves that for the next event—but a song by Queen, the late-'70s supergroup whose flamboyantly gay lead singer died several years ago of AIDS. Outside the room, several George W. Bush supporters are waving signs and waiting for McCain to emerge. One has tacked a full-color, poster-sized reproduction of the *New Republic* to a broom stick. The cover has McCain's picture on it. The headline says, "This Man is *Not* a Republican."

By any measure, it's an exaggeration. Judging by the positions he takes on most issues, McCain is a conventional Republican, even a fairly conservative one. Yet in primaries, issues usually matter less than symbols, something the Bush campaign seems to have figured out early. In addition to his now-famous trip to Bob Jones University, Bush blanketed radio and television in the state with ads that depicted McCain as the creepiest sort of NPR liberal—a free-spending elitist who probably can't wait to raise taxes on the middle class in order to subsidize abortions and homosexual pornography. Less than a week before the primary, a PAC called Keep It Flying materialized out of nowhere and in its only recorded act sent a couple of hundred thousand letters to white voters pointing out that George W. Bush's wife, Laura, has publicly defended the right of South Carolina to fly the Confederate flag over the statehouse.

McCain's wife Cindy, meanwhile, was repeatedly attacked on radio call-in shows—and in the northern part of the state, in push polls—as a drug addict unfit to be first lady. One afternoon in Hilton Head, a man who said he did not work for the Bush campaign was spotted at a rally passing out flyers savaging Cindy McCain. A McCain aide chased the man, caught him, and was moments away from making the newspaper when Rep. Lindsey Graham stepped in to prevent violence.

Graham has traveled with the McCain campaign for weeks, and often acts as a calming influence. In television interviews, Graham can sometimes seem simple. He's not. On stage, Graham is a compelling speaker, inspiring and cuttingly witty. (At a rally in Myrtle Beach he described McCain as "a short man who looks good in a leather jacket.") On election night, in a hotel ballroom in North Charleston, Graham takes the podium to introduce the candidate, the night's loser. Behind him on a wall is an enormous hand-painted banner with the campaign's informal slogan: "Burn It Down." Across the room, above an alcove where soft drinks and popcorn are sold, is a permanent sign. In foot-high letters it reads: CONCESSION.

As Hughes admits later, Bush wasn't on an airplane at all, but at a rally in Kansas City; he simply didn't feel like calling McCain.

But Graham isn't ready to concede. The McCain campaign, he tells the crowd, is not simply a campaign. It is not merely a political movement. It is a kind of spiritual process. "One thing we've learned," he says, "is that if you're supporting John McCain you're better for the experience. You're a better person."

McCain supporters, of course, believe that McCain is a better person, and if politeness is a measure of virtue, they may be right. Minutes after CNN called the race in South Carolina, McCain called Bush from his hotel room to offer congratulations. Bush was in a jovial, talkative mood. Two days later, when the networks declared McCain the winner of the Michigan and Arizona primaries, McCain's staff kept a cell-phone line open for Bush's call. It never came. According to Bush spokeswoman Karen Hughes, Bush's silence wasn't an act of pettiness or petulance or bad sportsmanship. He simply couldn't get to a phone. "He was on an airplane," she explains.

Actually, as Hughes admits moments later, Bush wasn't on an airplane at all, but at a rally in Kansas City when the news of his defeat appeared on television. It turns out he simply didn't feel like calling. "I don't think Sen. McCain called Gov. Bush to commend him on Delaware, or on Iowa for that matter," says Hughes, referring to two states in which McCain never campaigned.

If McCain's feelings are hurt by Bush's rudeness, he isn't showing it on election night in Phoenix. McCain has spent most of the day in the living room of his house chatting with friends and watching television. The race is called at 6:30 local time, and 90 minutes later, McCain is back on the bus on the way to his victory party. Next to him is John Weaver, the campaign's political director. A tall brooding Texan who has a five o'clock shadow by breakfast, Weaver usually looks like a man who has just received horrible news. McCain, who likes to needle him, calls him "Sunny John." Tonight Weaver is obviously delighted. McCain looks at him and grins. "Even Sunny is smiling," he says, "and when that happens you know it's a cataclysmic event. I don't expect it to last more than an hour or two." ♦

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John McCain's Conservative Problem

Invoking Reagan won't be enough to reconcile the right to John McCain. BY FRED BARNES

JOHN MCCAIN needs Republican voters. His ability to attract independents and Democrats produced smashing victories over George W. Bush in New Hampshire and Michigan. But now he faces primaries in which either crossover voters are not allowed or there's a competing Democratic primary likely to draw away many independents and Democrats. So McCain must appeal to core Republican voters. It won't be easy. He's succeeded in the GOP presidential race so far by not sounding or acting like a regular Republican. Now McCain's maverick ways are a liability rather than an asset. And it's his un-Republican style, far more than his stands on issues, that has infuriated many GOP voters.

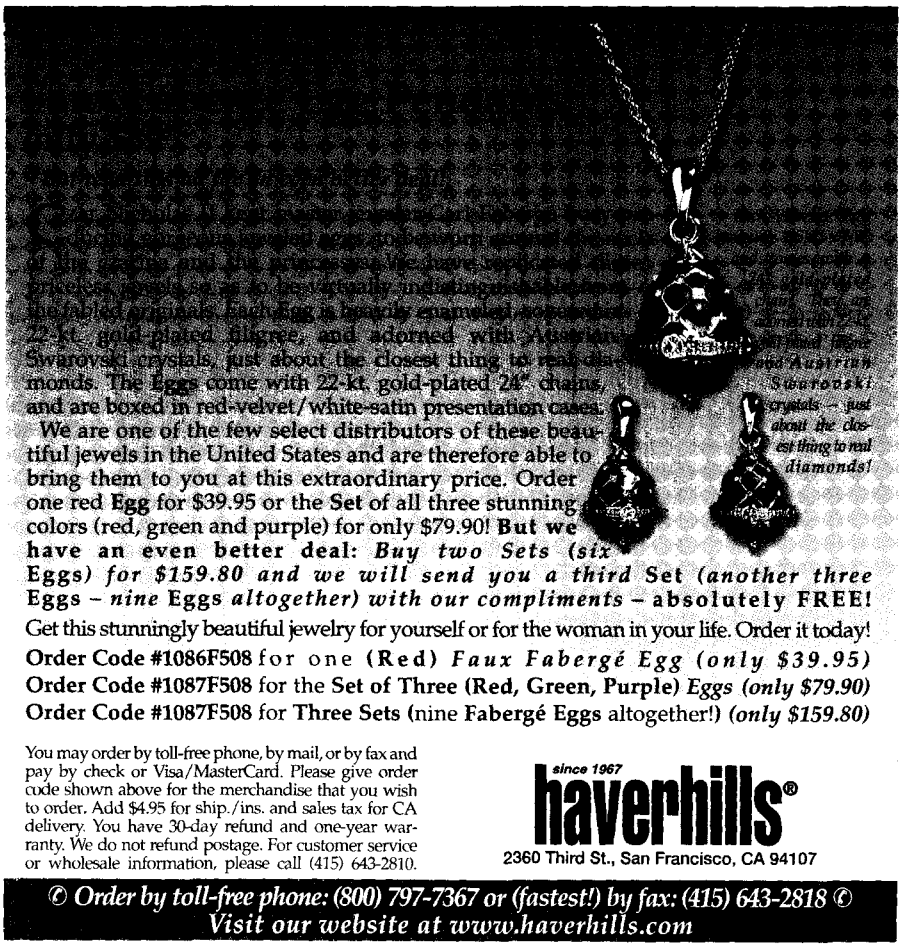
The conventional wisdom is that McCain must only toughen his fuzzier positions, such as his opposition to abortion, and emphasize his conservative stands on others like missile defense, gay rights, and partial privatization of Social Security. But this won't be sufficient. Nor is McCain's insistence he's "a proud Reagan Republican" likely to appease conservatives. Their opposition to McCain isn't ideological. It's visceral. And this explains why they preferred Bush, who's only slightly more conservative than McCain, by roughly two to one in the early primaries.

Part of McCain's problem with Republicans is the way he has wooed independents and Democrats. He claims he's doing what Reagan did in attracting the Reagan Democrats. In truth, McCain's outreach is different and was bound to irritate many Republicans. Reagan's message was that *conservative* Democrats and independents shared his views and those of the GOP, and should come on board. McCain's pitch is to *moderate* and *liberal* independents and Democrats. His message is that he doesn't share the views of the Republican establishment and they should join him in taking over the party.

To make matters worse, McCain uses Democratic arguments against Republicans, or at least against Bush. He and his aides attack Bush's tax cut as favoring the rich, a tack GOP leaders often condemn as Democratic class warfare. "Sixty percent of the benefits from Bush's tax cuts go to the wealthiest 10 percent of Americans," McCain said in January. "I'm not giving tax cuts for the rich." Rick Davis, McCain's campaign manager, declared on *Fox News Sunday* on February 20 that Bush "gives a lot of money to the rich in tax cuts." Davis was challenged on whether this money was really being "given" or whether people were being allowed to keep more of their own money. He conceded it was "the people's money."

Another McCain talking point usually associated with Democrats is the flogging of religious conservatives. The McCain campaign has singled out both Bob Jones University, where Bush spoke in the run-up to the South Carolina primary, and TV evangelists Pat Robertson and Jerry Falwell. McCain staffers made phone calls

Fred Barnes is executive editor of THE WEEKLY STANDARD.



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before the Michigan primary linking Bush to the anti-Catholic views of Bob Jones II, the university's former president. McCain has criticized Robertson and Falwell, both Bush backers, for trafficking in "hate stuff."

Then there are the pro-lifers whom McCain has antagonized. Except on fetal tissue research, McCain has routinely supported the pro-life position during 17 years in Congress. But he's made statements as a candidate that leaders of the anti-abortion movement have attacked. Last August, he said he wouldn't support overturning *Roe* v. *Wade* "in the short term or even in the long term." McCain later said he "misspoke" and now says he wants the 1973 high court ruling that legalized abortion reversed. Doug Johnson of the National Right to Life Committee, however, says McCain couldn't have just expressed himself awkwardly because he offered a rationale for preserving *Roe* v. *Wade*. McCain said overturning it would "force X number of women to [have] illegal and dangerous operations," a line of reasoning invoked by pro-choicers. NRLC, which opposes McCain's campaign finance bill, has endorsed Bush.

In fact, the whole thrust of his campaign may hinder McCain in wooing Republican voters. He says the Republican leadership in Congress, along with the rest of Washington, has been captured by special interests. Many GOP voters are critical of congressional Republicans, but not for this reason. They are angry with Republicans on Capitol Hill for not being conservative enough. In any case, McCain's indictment of Washington is hardly a reprise of Reagan's. Reagan concentrated his attacks on bureaucrats and Democrats, then in control of the House and Senate.

All this—the Democratic arguments, the zinging of Republicans—leaves McCain in a difficult position. Even if he wins the nomination, he'll probably have done so with a minority of GOP votes. Just as he's having trouble winning over Republicans now, he'll find it hard to unite the party then. And no presidential candidate wins if his party's base is alienated. ♦

A New Majority?

Can either Bush or McCain follow in the footsteps of FDR and Reagan? BY NOEMIE EMERY

"CAN YOU CALL your campaign a hostile takeover of the Republican party?" one of the boys on the bus asked John McCain in South Carolina. Yes, said the candidate cheerfully, adding that the party would learn to love it later on.

A *hostile* takeover? If McCain loses the nomination, it will be in part because he allowed this idea to take root. Political parties, and the coalitions they shelter, are groupings of disparate interests, united for one of two reasons: because the interests involved have a common goal that overrides their differences; or because they find that together they all can have more power than any one could have on his own. In 1792, small farmers and the southern slave-holding gentry joined the New York machine of Aaron Burr to found the Democratic party (then the Democratic-Republicans), bound by their dislike of the Federalists' policies. As Dr. New Deal, Franklin D. Roosevelt assembled a motley crew of urban ethnics, crypto-Communists, and southern Bourbons behind his domestic agenda. When his main concern became foreign policy, he broke apart that coalition and assembled a new one, including businessmen and the Stimson Republicans. Ronald Reagan joined the Goldwater backers to the neoconservatives who had voted against them, and linked both to lunchbucket Democrats. Coalitions are often unlikely, impure, messy, and difficult, and tend to annoy true believers of any description. They are also crucial, if one wants to hold power.

Consider the three-way split in the electorate. In presidential elections, the core vote of each party is around 37 percent, with an unaligned 25 percent moving between them. During impeachment, Clinton's core defenders were about 30 percent, his core critics another 30 percent, with the rest hostile to both, or indifferent. Ideological breakdowns are similar, with the electorate self-defining as roughly a third conservative, a quarter liberal and two-fifths moderate. No party can win without its base, but no party can win with only its base. In 1992 and 1996, Republicans nominated establishment figures, who placated the base of the party but excited no one outside it, and lost twice to Bill Clinton, who made deft verbal appeals to the center.

Learning from this, McCain has ignited the center, and even disarmed many Democrats, showing the fine touch of Reagan and Roosevelt. But he has also done something both of this century's great coalition builders would have tried to avoid: annoyed and ticked off his party's base. Astonishingly, he has failed to make an issue of any of their core concerns. Has he still time? We will know later, but the stresses could have been lessened by a little better planning early on; they could be lessened still.

Surely there are some bridge issues that can join the right to the common-sense center, and mark both of them off from the left. Quotas could do it. So might the devastation wrought by this administration upon the armed forces, which would surely get worse under Al Gore or Bill Bradley, who have made clear that they will take their advice about unit cohesion not from Colin Powell but from Patricia Ireland and Barney Frank. Coalitions are creatures of discord, but they survive via balance: No

Noemie Emery is a frequent contributor to THE WEEKLY STANDARD.

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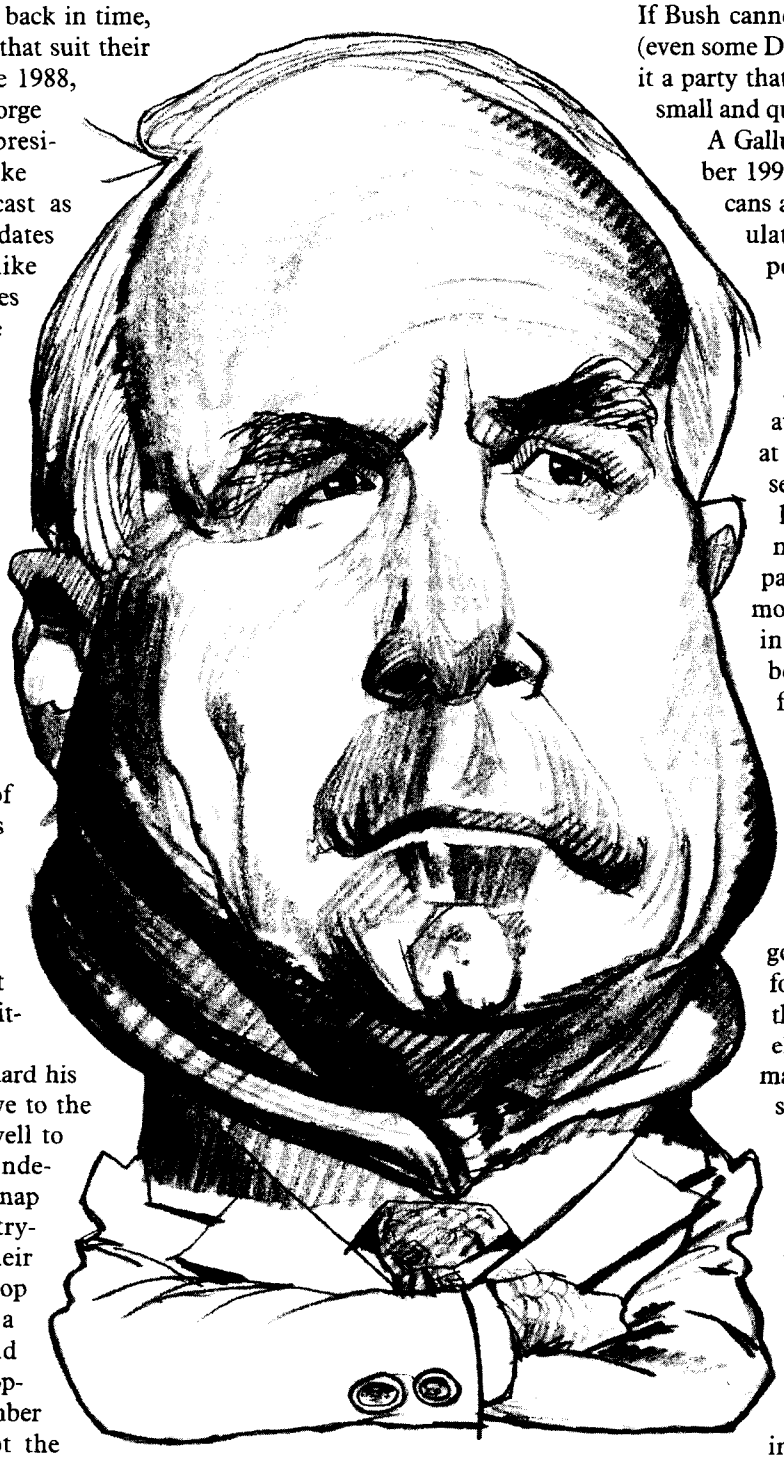
one bloc gets it all, but no one is wholly neglected. McCain has let the Republican base think he is giving it nothing. And it has shut him out in return.

Politicians like to go back in time, searching for scenarios that suit their wishes. Democrats like 1988, with Al Gore cast as George H.W. Bush, the vice president. Republicans like 1984, with Al Gore cast as Fritz Mondale. Candidates trailing in the polls like 1948, with themselves cast as Truman. Some Bushies like to think about the 1896 election, when William McKinley ushered in an age of Republican dominance. But for Republicans facing the 2000 election, the Year-to-Fear is 1912, when the establishment broke with the hell-raising center, and let Woodrow Wilson slip in. If McCain now seems in danger of becoming TR in his Bull Moose incarnation, George W. Bush has to guard against becoming President Taft, with establishment backing, and damned little else.

If McCain should guard his right, Bush has to move to the center. He would do well to stop whining about independents trying to kidnap "his" party, and start trying to appeal for their votes. He should stop referring to his party as a closed corporation, and independents as interlopers. (They might remember this later.) This is not the way a great party grows, and renews itself. This is not the language of a Ronald Reagan, who would have welcomed "intruders," wooed them, and then charmed their socks off. This is the language of a Walter F. Mondale, who said in his 1984 fight with Gary Hart that he wanted only "real" Democrats. He got them, and not one vote beyond them, on his way to losing 49 states. He was wiped out by Reagan, who was not as fastidious, and was also a great politician. Reagan's self-described heirs could learn a lot from him. If McCain does not connect with the right, his crusade will not flourish. Bush should realize that McCain's appeal is authentic, and not a ruse dreamed up to distract him. If Bush cannot appeal to "intruders" (even some Democrats), he will inherit a party that is quite pure and quite small and quite dead.



Thomas Fluharty

A Gallup poll taken in December 1999 showed core Republicans at 29 percent of the population, Democrats at 32 percent, and independents at 31 percent. A Pew poll last month showed conservatives at 31 percent, moderates at 47 percent, and liberals at 22 percent. Clearly, conservatives or core Republicans come nowhere near being a governing party. But allied with the moderates—those who lean in their direction—they become an unstoppable force.

There is a governing majority in this country that is right of center, but not one that is truly right-wing. There is a majority for cutting the scope of the government, but not one for no government. All the efforts since the 1994 election have failed to make a libertarian consensus emerge. Unless one enjoys being marginalized, it is better to join, or to construct, a winning coalition. This is the case that McCain hasn't made. He has not explained, in these terms, why it is better for the conservative base to belong to an inclusive party that can enact some of its measures, than to see liberals rule, and get nothing. He has not explained to conservative critics why his way is better for *them*. When cries of a liberal plot to nominate

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McCain went up after New Hampshire, he should have been quick to address them directly.

Addressing these fears should not be so difficult. Are the Democrats, who managed to lose both houses of Congress, and who haven't delivered a clear majority for a presidential candidate since the 1976 election, really capable of controlling in a Machiavellian way hundreds of thousands of voters? Do they control the independents, who vastly outnumber the Democrats who voted for McCain in this season's primaries? And what about the stunning infusion of new, first-time voters? Are they, too, directed by the Democrats? Or are they more like the Jesse Ventura contingent, who helped the flamboyant ex-wrestler streak past the respectable but unexceptional Republican, and some of the Democratic party's best-known brand names in Minnesota? If Democrats are making mischief in Republican primaries, why are they supporting a man who has Gore's people frightened, and who leads Gore by *24 percentage points* in recent polls? Are these numbers made up by the press? By pollsters? Is there a second gunman on the grassy knoll?

Building a coalition of the center-right should be possible, as both Republicans are conservative moderates, close to the center of public opinion. But coalition building is an art, not a science; a function of talent, not intellect. There is a reason why so many fail at it, why success is so fleeting, why Reagan and Roosevelt are viewed in political circles with such reverence. McCain and Bush so far seem to be suffering from largely self-inflicted wounds. Why did the man who took Goldwater's seat provoke and ignore the core of his party? Why did the inclusive, new-model, New Conservative governor of Texas find himself fighting inclusion and novelty, and more or less boxed in by the very far right? Each of these men could build a great coalition. Each has part of one now. If either can't figure out how to build a whole one, an administration steeped in lies will hold on. ♦

Racing to Indict Rudy's Cops

Overreach doomed the prosecution of the officers who shot Amadou Diallo. BY JOHN PODHORETZ

New York

FOR THE PAST YEAR, if you were to express even a whisper of doubt here about the guilt of the four cops involved in the tragic shooting death of Amadou Diallo, you were treated as though you were dancing on the poor man's grave. What justification, the Diallo fanatics would shout, could there possibly be for the firing of 41 bullets at an unarmed man in his vestibule?

According to the rainbow coalition of a jury that heard the Diallo case in Albany—made up of blacks, whites, women, men, somebody in a wheelchair, a gay activist—the four officers had nothing *but* justification. The jurors were given almost every possible opportunity to convict Sean Carroll, Edward McMellon, Richard Murphy, and Kenneth Boss of something. The charges ran the gamut from the original "second-degree murder" down to a minor felony called "reckless endangerment."

In all, there were six different possible crimes for which the cops could have been convicted. And so, 24 times, when asked the jury's verdict, the forewoman said: "Not guilty."

Then the bailiff asked the other jurors, "And so say you all?" And 24

Contributing editor John Podhoretz is a columnist for the New York Post.

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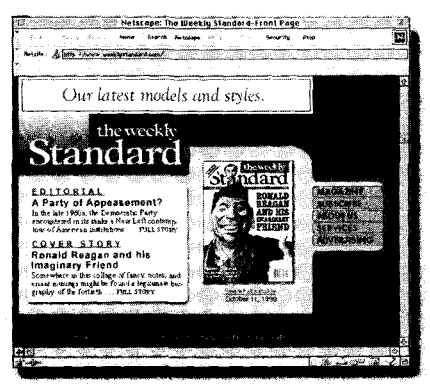

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times the jurors said, in unison, "Yes."

Take that, Hillary Clinton. A month ago, during a meeting with black leaders, the carpetbagger candidate casually called the killing a "murder." Her use of the word caused a mini-scandal, and Mrs. Clinton backed down from it, given the fact that the trial was about to begin—and we are all supposed to believe that people are innocent until proven guilty, right?

You might think the presumption of innocence would be especially important to a liberal like Mrs. Clinton. But this was the Amadou Diallo case—and when it came to the Amadou Diallo case and the liberals of New York City, the very notion of the presumption of innocence was considered somehow offensive. Four white cops had shot and killed a black man. That fact alone was considered almost prima facie evidence of their guilt, given how ugly relations can be between black people and police officers.

But what crime was it they were supposedly guilty of? According to Robert Johnson, the very political district attorney of the Bronx who convened the grand jury that indicted the cops, they were guilty of a "drive-by shooting"—which justified a charge of "second-degree murder." The indictments should have been greeted with gasps of outrage and shock, because police officers are supposed to be protected from such treatment. As a society, we pay cops to apprehend dangerous criminals who might be carrying weapons of their own—and just as a soldier who kills on duty is not a murderer, neither is a police officer.

Johnson never offered a narrative of the case that differed from the version offered by the police officers, which was this: It was dark. Diallo was in the vestibule of his apartment building. Officer Sean Carroll saw something in Diallo's hand when the man turned. He shouted "gun" and began firing. So did Officer Edward McMellon, but as McMellon fired, he fell down—and Diallo was still standing. The other two officers, who were

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the backup, thought McMellon had been shot by Diallo, and so they fired as well. The whole tragic business took less than 10 seconds.

But again, this was the Diallo case, and Johnson is black, and so was Diallo, and so were most of the protesters in town, and for months the city had been in an uproar, and justice had to be done. So what if "justice," in Johnson's politicized and racially Balkanized version of it, was actually the worst kind of injustice—the railroading of four police officers by the district attorney of one of the largest counties in the United States?

No outrage was expressed by the folks who are usually so quick to condemn prosecutorial overreach (see: Hillary Clinton). After all, by the time the indictments were handed down more than a thousand people had had themselves arrested in front of police headquarters, their hands placed in plastic handcuffs before the cameras, the charges later dismissed.

The demonstrations had no real purpose but to embarrass and harass mayor Rudolph Giuliani, who showed almost superhuman restraint when he refused to denounce the officers even as he expressed daily remorse for the tragedy that had occurred.

The demonstration's organizers—among them two top advisers to Hillary Clinton's Senate campaign—wanted to discredit Giuliani's crime-fighting efforts by discrediting the police department. In so doing, his brilliant record as mayor would be tarnished, and the left-liberals he has disenfranchised with his two mayoral victories and humiliated by his ability to govern a city they had made seemingly ungovernable might be able to hold their heads up once again.

They didn't really care about Amadou Diallo. To Al Sharpton, to Susan Sarandon, and even to Hillary Clinton, Diallo is just a corpse to use against Giuliani. They hate Giuliani so much they were willing—they were eager—to see four innocent police officers sent to jail for 25 years in pursuit of a petty political agenda.

The jurors didn't allow that to happen—and thank God. ♦

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Who Wants to Pass Proposition 22?

What do the candidates say about California's marriage initiative? BY DAVID ORGON COOLIDGE

ON MARCH 7, the day of the presidential primary in California, Golden State voters will approve or reject Proposition 22, an initiative that contains just 14 words: "Only marriage between a man and a woman is valid or recognized in California."

The measure says nothing about domestic partnerships, which are covered by the state's Domestic Partners Act of 1999. That law created a registration system for same-sex couples and heterosexual couples over the age of 62 and granted them hospital visitation rights and public-employee health benefits. Prop. 22 leaves intact the Domestic Partners Act, as well as other laws related to sexual orientation, civil rights, and hate crimes.

Prop. 22 simply allows the people of California, rather than their courts, to determine what definition of marriage will be used by the state—and establishes that the definition will be the union of a man and a woman. It does this, moreover, with a degree of permanence, since statutes adopted by initiative cannot be repealed by the legislature but only by another vote of the people.

On the face of it, the measure shouldn't be controversial. All five presidential candidates have stated that they oppose expanding the age-old definition of marriage to include same-sex couples, and polls consistently show public support high. The Public Policy Institute of California poll taken February 2-10, for example, shows 57 percent in favor of Prop. 22, 38 percent opposed, and 5 percent undecided. Latino voters support Prop. 22 by 61 percent to 37 percent.

Yet at this writing, only two presidential candidates—Alan Keyes, and lately John McCain—have endorsed Prop. 22. McCain's statement of "full support" for Prop. 22, issued February 24, reminded the public that he had voted for the federal Defense of Marriage Act in 1996 "to outlaw gay marriage in the United States." George W. Bush has not so far taken a position on Prop. 22, but his website notes: "Opposes same-sex marriage."

On the face of it, the measure shouldn't be controversial. All five presidential candidates have stated that they oppose expanding the age-old definition of marriage to include same-sex couples.

Al Gore and Bill Bradley, by contrast, see Prop. 22 as sinister. At a town meeting at Los Angeles City College, Gore called it "mean-spirited in too many ways." Bradley told the *Advocate*, "While I'm against 'gay marriage,' if I was a voter in California, I would not support [Prop. 22]." A spokesperson for his campaign says Bradley—who, when a U.S. senator, voted for the Defense of Marriage Act—believes Prop. 22 is "divisive."

Gore has recently amplified his position on same-sex unions. Speaking to a group of New York reporters, the vice president endorsed "same-sex contracts that have the same rights as marriage" and promised, if elected, to "appoint a working group or commission to give detailed recommendations on exactly how these partners should be recognized." According to the *Washington Blade*, Bradley said last year that he, too, supports "some form of domestic partnership with identical rights and privileges to those of a civil marriage."

What is lacking in all this is an outspoken defense of what the major candidates *do* want to call "marriage." It would appear that the candidates are reading the press instead of listening to the people. From the major California newspapers, you would think that Prop. 22 was an extremist plot to take over California for the purpose of tormenting homosexuals.

"One need not be a supporter of same-sex marriage to understand why such couples and their families should not be singled out for attack," opines the *Sacramento Bee*. The *San Francisco Examiner* pronounced, more pungently: "We can't imagine why anyone would vote for this punitive, putrid measure. It's a piece of ballot garbage that deserves to rot in the hot California sun."

In a campaign full of sermonizing on compassion, it is striking that no major candidate has so far shown the inclination to respond to such vicious rhetoric. It would be refreshing to hear one of them stand up and say: "I think a lot of ordinary Californians are being insulted by the campaign against Proposition 22. Whoever said that being in favor of marriage makes a person a bigot? I don't buy that. I'm against calling same-sex relationships 'marriage,' and I'm glad Californians have a chance to decide this question for themselves." ♦

David Orgon Coolidge is director of the Marriage Law Project in Washington, D.C.

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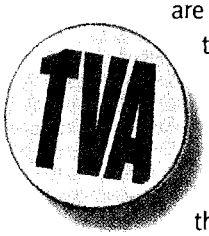
THE UNTOUCHABLES

CO-OPS, MUNIS AND FEDERALLY-OWNED UTILITIES— "UNTOUCHED" BY REFORM

There once was a time when the debate over the restructuring of America's utility industry was seen as an opportunity to correct decades-old competitive imbalances in the marketplace. This would have meant a leveling of the proverbial "playing field"... with rural electric co-ops and municipal-owned utilities being forced to give up many of their conspicuous federally-conferred privileges. This would also have meant getting the federal government out of the electricity business by putting the Tennessee Valley Authority (TVA) and the Bonneville Power Administration (BPA) on a path towards privatization.

This debate never happened. Instead, co-ops, munis and federally-owned utilities have not only escaped fundamental reform—they are on the verge of grabbing numerous new advantages for themselves.



The "Jurassic" federally-owned utilities—genuine museum pieces, they are—will lumber along as if the restructuring debate never occurred... because for them it didn't!

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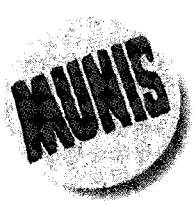

The co-ops have achieved a prodigious booty of carve-outs, exemptions, exclusions and special favors for themselves—and they still want more. Much more!

What happened to the great "restructuring" debate? Things that should have been at the top of Congress' reform agenda... are now at the top of Congress' untouchables list.

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Al Sharpton and the Apollo Democrats

Gore and Bradley pander up a storm in Harlem.

By Matt Labash

Harlem, New York

Last Monday night was like any other here in Harlem—or it would have been, were it not for all the white people. On a typical day, you won't see too many of them strolling the boulevards past the Fubu clothing billboards, hair-braiding shops, and shutters bombed with graffiti. But on Democratic presidential debate night, a night made possible by Reverend Al Sharpton's threat to mobilize against Al Gore and Bill Bradley if they did not debate in Harlem, white people are thick on the ground. There are white people with earpieces talking into their sleeves, white campaign sign-holders trying to pass themselves off as "the community," white scribes at the United House of Prayer press room across from the Apollo Theater, working out variations on the hackneyed *It's Showtime at the Apollo* theme.

There's also me, a longtime white person, on my way to see Al Sharpton a few blocks away. Escorted from my cab by Sharpton's publicist (a job description that's redundant), I notice the office above his belongs to the Israeli Church, a group of Black Jews. At first it seems like a karmic real-estate joke. Sharpton, the man responsible for fanning the flames of violence against the Hasid in the 1991 riots in Brooklyn's Crown Heights neighborhood, shares a building with the Lost Tribe of Sammy Davis Jr. They are not real Jews, however, but black militants, which one can ascertain from their military-style uniforms and the pictures of Black Jesus on their wall (as in the Messiah, not Earl Monroe).

Inside Sharpton headquarters, I'm introduced to Moses Stewart, the father of Yusuf Hawkins, a black youth who was murdered a decade ago by a band of Italian toughs in Bensonhurst. Stewart is now Sharpton's Crisis Coordinator, and conducts a tour of the premises (though Sharpton's organization has only 10 full-time employees, it has 21 committees—from the Court Patrol to the Buy Black Steering Committee). The building is a Hollywood set decorator's clichéd notion of black-activist digs. A red-oak black-power fist sits in the lobby. Books about Ché Guevara and the prison-industrial complex line the shelves. Inside the cavernous, folding-chaired meeting room called the "House of Justice," where Democrats from Hillary Clinton to Bill Bradley have dropped in on their ring-kissing tours, the walls are trimmed with photos of men of respect (Dr. King, Adam Clayton Powell), men of action (Johnnie Cochran), men with bad haircuts (James Brown and Don King, two of Sharpton's mentors). There's even a Reverend Ike-style concession cabinet that sells herbal colonic and intestinal cleaners. "They're amazing!" says Moses. "They'll clean you out, take care of built-up residue or backed-up anything!"

Sharpton appears not to have plowed much of his $10,000 speaking fees into office decor: lime-green carpet, exposed electrical wires, and a coiled flystrip, complete with deceased black bug, hanging from the ceiling. Sharpton himself is immaculately tailored in a Brooks Brothers pinstripe with symmetrical four-point pocket square. Though he still sports the Mother Popcorn conk (James Brown made Sharpton vow to always wear his hair that way), Sharpton long ago forsook his civil-disobedience "jail clothes," the jogging suits that made him look like a waddling ball of iridescent Jell-O.

While Sharpton is most often seen exhorting "No Justice, No Peace," today he is playing the savvy party elder, patiently explaining to a BBC reporter on the phone the legal intricacies of the Amadou Diallo case (Sharpton is spokesman for the family of the West African immigrant, who was shot to death by four white police officers who mistook Diallo's wallet for a gun, a mistake Sharpton calls an "assassination"). Sharpton has come to wield considerable power in New York, despite perpetrating the Tawana Brawley rape hoax and other acts of shameless race-baiting. On Martin Luther King Day, Hillary cheerfully rolled through the House of Justice, and shared a stage

Matt Labash is a staff writer for The Weekly Standard.

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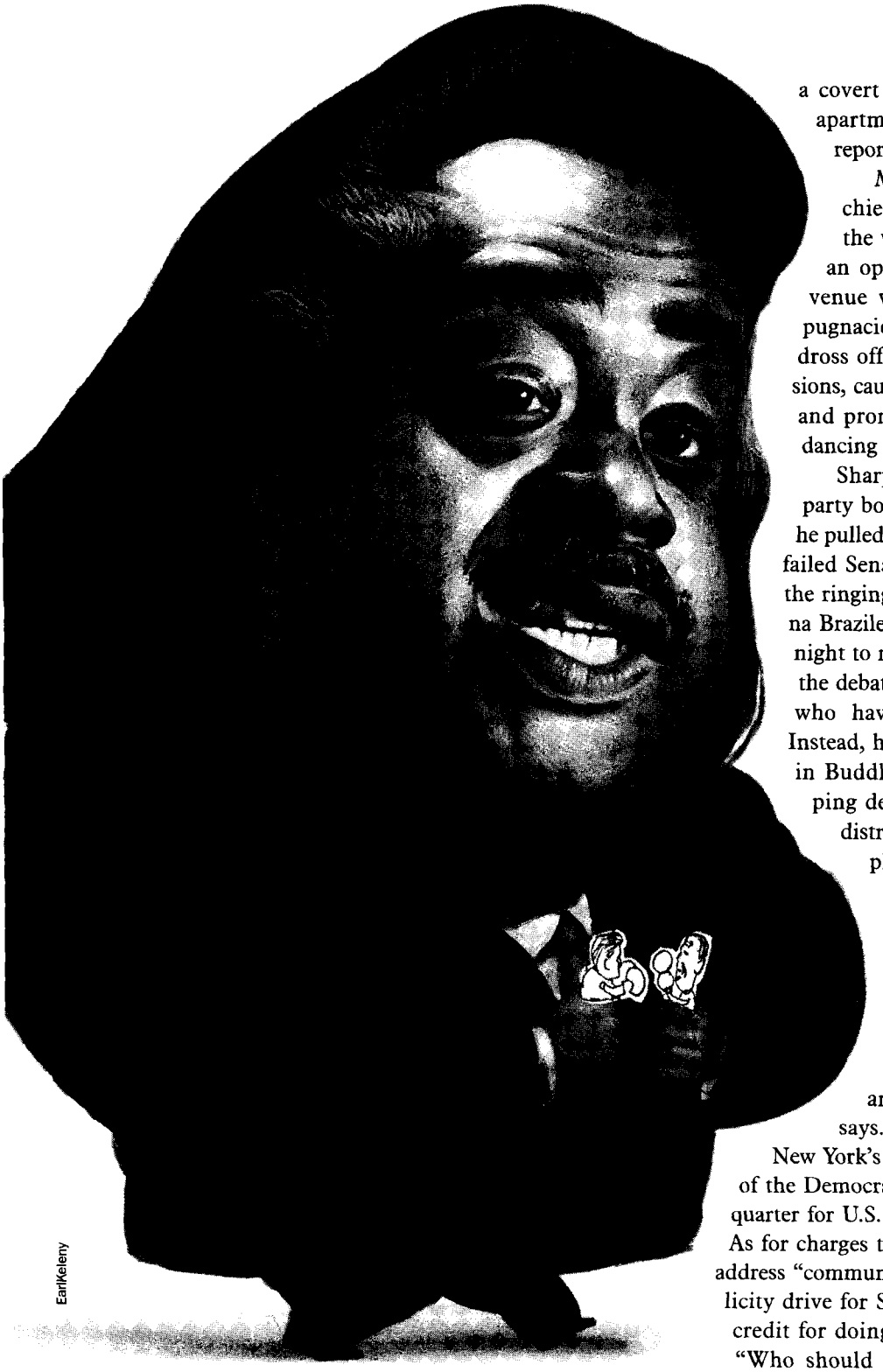
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with another Sharpton invitee who slighted her people (the Jews). Bradley hired Sharpton's old campaign manager and courted Sharpton on three occasions, but has still managed not to secure an endorsement. Even Gore, who initially resisted Sharpton's charms (or threats, as Sharpton tells me he was prepared to paper the black community with anti-Gore literature), ended up granting Sharpton a covert sit-down at daughter Karenna's apartment, while Gore aides misled reporters about the summit meeting.

More impressive, Sharpton was chiefly responsible for cowing two of the whitest candidates in politics into an open-mike format at the Apollo, a venue with an audience so legendarily pugnacious, that they booed Luther Vandross off the stage on four different occasions, caused Sammy Davis Jr. to fall mute, and prompted Ella Fitzgerald to give up dancing as she was incapacitated by fear.

Sharpton, who regularly rails against party bosses, has come to resemble one—he pulled 85 percent of the black vote in his failed Senate and mayoral bids. He ignores the ringing phone, though it might be Donna Brazile or Tony Coelho (who "called last night to make sure I was comfortable about the debate") or one of the Bradley minions who have been pestering him of late. Instead, he sits beatifically behind his desk in Buddha-meets-Boss Tweed mode, flipping debate tickets to an assistant to be distributed to the steady stream of supplicants loitering outside his office.

In private, Sharpton talks not like a flame-throwing activist, but a clear-eyed pragmatist. Despite obsequious overtures from both candidates, Sharpton harbors no illusions that Gore or Bradley actually *likes* him. "Bill Bradley and Al Gore can count," Sharpton says. "To come to somebody [before New York's March 7 primary] who got a third of the Democratic primary vote for mayor and a quarter for U.S. senator is not exactly a sacrifice." As for charges that the entire debate, intended to address "community concerns," is yet another publicity drive for Sharpton—well, what of it? "I get credit for doing this, because I did it!" he says. "Who should get credit for it—someone who didn't do it?"

Sharpton compares his newfound legitimacy to that of Jesse Jackson. One can deduce that Sharpton's a bit obsessed by Jesse, his dear friend and mentor. He exhibits pictures of Jesse with his children. He recalls the minutiae of long-ago conversations with Jesse. At one point, he grabs a remote control from his desk and flips on the VCR, which contains an already-cued *Frontline* documen-

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tary on Jesse—in order to prove that Jesse wore the same MLK medallion that Sharpton used to sport over his track suits.

He even knows exactly what Jesse was doing at the same stage in his career (Sharpton's 13 years younger). Sharpton relates all this in a sort of stream of consciousness: "Most media don't remember that Jesse was considered controversial too—for-calling-Daley-Pharaoh-boycotting-stores-hugging-Yasser-Arafat-Hymietown-saying-Zionism-was-a-poisonous-weed-saying-he-lied-about-holding-Dr.-King-when-he-died." Though he obviously swells with admiration at Jackson's metamorphosis, Sharpton allows that "in many ways, I made headway that Jesse hasn't made. Let's not forget, [in 1988] Ed Koch said a Jew would be crazy to vote for Jesse Jackson. Today, Koch is bringing candidates up to my headquarters."

Sharpton gets defensive about where he fits into the civil-rights movement, because of course he has sullied the King legacy beyond recognition. While King marched for fundamental freedoms, Sharpton stakes his leadership claims on microscopic issues, imagined slights, and frequently successful shakedown schemes. Just this month, Sharpton parachuted into the University of Michigan student union to protest a privately funded student society that uses Native American trappings for its ceremonies. "They have a little plaque that says 'chief scalper,' and they salute him—real offensive stuff," says Sharpton, of the club that once claimed Gerald Ford (or "Flipp 'Um Back," as he was then known) as a member.

As Sharpton treks off to the debate, he studiously avoids the daffy supporters in his lobby, like Rolando, an Ecuadorian immigrant who is convinced the city's child services department has, as part of a government plot, kidnapped his vegetarian son and forced him to eat meat. ("Why would they do that?" I ask Rolando. "It beats me up," he says in broken English.)

Sharpton's entourage pushes through the crowd at the Apollo like a pig through a boa. The hem of his garment is repeatedly touched. Old men say "Reverend Sharpton" in the admiring tones of someone watching his son accept a diploma, while other hosanna-singers call out "doctor" and "senator" and confer all sorts of honorifics Sharpton has yet to earn. Inside the debate, CNN's Bernard Shaw introduces Sharpton, who is permitted to throw out the first pitch to the candidates, asking their position on police brutality. Gore and Bradley strike bold stands—they're against it. From there, the evening turns into pure pander-monium.

Bradley praises this "path-breaking debate" in the middle of "Black History Month." Gore introduces, apropos of nothing, Martin Luther King III, seated in the audience. Bradley vows to make the Voting Rights Act permanent, so that minorities' right to vote "will never be endangered," though it's not clear exactly who today is endangering them. Gore praises the merits of black radio shows like Tom Joyner's. Bradley promises to consider selecting a black vice president, to get natural-gas buses for Harlem, and to implement "info stamps," affording inner-city children the same chance as the rest of us to e-mail dirty jokes to their friends via the Internet. Gore notes that tonight is the 35th anniversary of Malcolm X's assassination, forgetting perhaps that he had been shot by Black Muslims. In the most tortured metaphor of the night, Gore says he rubbed the Apollo's stageside lucky charm, the tree of hope, because "I want to make the tree of hope the tree of reality for Harlem."

The debate turns out to be the most raucous in recent memory. Audience members yell "time" when they tire of a candidate's response, an innovation that the League of Women Voters might want to adopt. One angry environmentalist conducts a minute-long, off-mike Gore harangue at the top of his lungs. Audience members cheer and jeer and gasp when Bradley accuses Gore of doing a "Gore dance," a slanderous allegation as anyone knows who has seen Gore dance. When Gore sleazily suggests that Bradley thought the Congressional Black Caucus was on the left end of the bell curve, Spike Lee, sitting in a velvet box above the stage, begins heckling Gore as if he was courtside at the Garden.

Back in the celebrity-packed spin room, Sharpton calls the debate a "victory for Harlem." It's obviously a victory for him. He is received like a visiting deity, earning embraces and soul shakes from the likes of Spike Lee and Usher and Cornel West, a fierce Bradley partisan who rails against Gore's lack of authenticity and his dorky tree-of-hope metaphor. "C'mon man," says an admonitory West, a Harvard professor. "This ain't no pop solo—with you tryin' to get on the tune, bitch! You runnin' for *president*."

Sharpton has still not given his endorsement. But back at his office, I convince him to try the pop quiz at *selectsmart.com*, the Internet candidate selector. After answering a series of position questions, the machine spits out the candidate that most closely adheres to Sharpton's worldview. Coming in third is Gore, just ahead of Bradley. Both finish behind Ralph Nader, who's in second place. But the big winner is David McReynolds, the Socialist party's nominee for president.

"Who's McReynolds?" a puzzled Sharpton asks. "He's the man you should be endorsing," I offer. Sharpton permits a slight grin, while staying fixated on the screen. "Maybe we should have him down to the House of Justice." McReynolds will probably come. But he'll have to take a number. ♦

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The China Trade

Membership in the World Trade Organization won't liberalize Beijing unless America insists on compliance with the rules.

By Greg Mastel

The fight over the permanent extension of most-favored-nation trading status to China is likely to be one of the hardest- fought congressional battles of 2000. Last week, the administration launched a high-profile campaign in favor of MFN for China; labor is vigorously countering. But for all the lofty rhetoric, at its core, the issue is the prosaic one of the merits of the agreement negotiated between Washington and Beijing last November, setting out the terms for China's accession to the World Trade Organization.

If this agreement is sound and enforceable, it is likely to encourage reform in China and vindicate a policy of engagement. If it is faulty or simply unenforceable, it is unlikely to spur positive change. Thus, before election-year bombast swamps the discussion, it is important to reach a sober evaluation of the proposed agreement and of China's record of compliance with recent trade deals.

¶ *The WTO Accession Agreement.* Trade agreements are by nature compromises, and this one is no exception. Unquestionably, some provisions could be improved. Chinese tariffs could be lowered beyond the 17 percent Beijing has agreed to. Foreign telecommunications firms and banks could be granted more leeway to operate in China. Subsequent negotiations between China and other WTO members may improve the terms on these and other issues.

On paper, however, the November deal has quite a lot to recommend it. China does agree to significant tariff cuts. It promises substantial new market access for agricultural products. And it assures U.S. banks and insurance firms considerably increased access to Chinese consumers.

Already, however, Chinese press reports indicate that Beijing may not plan to fulfill the agricultural provisions of the agreement. It is a familiar song. An examination of the four recent major trade deals the United States has struck with China shows that compliance is a chronic problem.

¶ *Intellectual Property, 1992.* One of the best-known agreements between the United States and China aims to protect patented, copyrighted, and trademarked material. The United States has sought improvement in this area from China for many years. After threatening sanctions, the Bush administration convinced China to undertake a sweeping update of its laws, which brought China's intellectual property protection regime largely into conformity with Western norms.

But these legal changes had little discernible effect. Chinese piracy of music recordings, computer programs, and films grew at an alarming rate at least through the mid-1990s. Movies and computer programs made by Chinese pirates turned up as far away as Canada and Eastern Europe.

After trying to address matters through quiet consultations, the Clinton administration threatened to impose trade sanctions in 1995. As the deadline approached, China agreed to step up enforcement. A year later, however, little had improved. Once again, the Clinton administration threatened sanctions. After much complaint, the Chinese agreed to a far more specific enforcement regime.

Under consistent pressure from the United States, China has regularly produced records of pirate operations it has shut down and invited the press to watch steamrollers crush pirated CDs. Although these actions show some effort to attack piracy, they also prove that it continues. Despite the limited success of American efforts, the affected U.S. industries estimate that their losses to piracy today are greater than they were when the subject of enforcement was raised in 1995.

Two points relating to enforcement warrant further attention.

It is perfectly clear that the families of leading Chinese officials, provincial leaders, and even the Chinese military have been involved in the piracy of intellectual property. Pirates reportedly set up facilities to make illegal CDs, for example, on People's Liberation Army bases, as a means of evading internal security police charged with shutting down pirate operations. The theft of intellectual

Greg Mastel is director of the Global Economic Policy Project at the New America Foundation.

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property, in other words, has not been solely the province of street level criminals. Elements of the Chinese government have participated.

Second, according to firsthand reports, government ministries routinely illegally copy computer software for their use. Chinese officials promised to address this matter in 1995, 1996, and March 1999. The persistence of illegal copying by government ministries calls into question the sincerity of China's commitment to protect intellectual property.

Both the private sector and the Clinton administration have made enforcement of this agreement a priority for the better part of a decade. Yet glaring violations remain. Were it not for the high-level American enforcement effort, there is no reason to believe that China would have made much effort to keep the promises it made in 1992.

¶ *Market Access, 1992.* Unfortunately, other trade agreements have not benefited from the same high-level commitment to enforcement. The sweeping agreement on market access struck with China in 1992 is a case in point.

Through the early 1990s, China followed an unabashedly protectionist policy, excluding many foreign products with trade barriers. Threatening sanctions similar to those used later on intellectual property, the Bush administration successfully negotiated improved market access for U.S. exports.

In its latest reports on the subject, the Clinton administration states that China has "generally" fulfilled its commitments. On some of the easily verifiable points, like elimination of formal barriers and lowering of tariffs, China does seem to have implemented the agreement. In other areas, however, there have been obvious problems. Only three will be discussed here.

First, China agreed in 1992 to eliminate import-substitution policies. In the past, economic planners had developed strategies for replacing particular imports used in the manufacture of automobiles, pharmaceuticals, power-generating equipment, electronics, and so forth, with domestic products. Time and time again, the Chinese government has ignored this commitment.

China also agreed to phase out import licenses and not to raise new barriers. Shortly after phasing out import licenses, however, China announced new import *registration* requirements for many of the products previously covered by licenses. And a number of other new barriers on products ranging from electricity-generating equipment to pharmaceuticals have sprung up.

Finally, China agreed to make public all its laws and regulations relevant to foreign trade—a major change. As a result, many trade directives are now publicly available. Yet, this elementary provision has not been implemented in a number of areas, including government procurement regulations.

These are unambiguous violations of the 1992 market-access agreement. It is difficult to estimate their economic importance. Washington has officially noted them over a number of years, and Beijing has offered neither denial nor explanation.

One obstacle to pursuing these matters, Clinton administration trade officials argue, is that other U.S. government agencies have other priorities, and many private companies oppose trade sanctions that could compromise their business in China. If, however, agency indifference and private sector grumbling are sufficient to halt enforcement, it is doubtful that *any* trade agreement, particularly with a country willing to intimidate U.S. companies, will ever be enforced.

¶ *Textile Transshipment.* For decades, trade in textiles and apparel has been governed by the Multi-Fiber Agreement. Under the MFA, importers and exporters of textiles negotiate what amount to quotas on textile imports on a bilateral basis. As the world's largest textile exporter and the world's largest textile importer, respectively, China and the United States concluded a number of bilateral MFA agreements.

For some years, there have been reports of "transshipment" of textiles and apparel by Chinese entities: Chinese companies label textiles made in China as having originated elsewhere, usually Hong Kong or Macao, to avoid MFA limits. Because transshipment is illegal, accurate figures are not available, but a past U.S. Customs commissioner estimated that transshipment from China into the U.S. market amounted to about $2 billion annually. A more recent U.S. Customs study noted that Chinese textile exports worth as much as $10 billion were not officially accounted for, and much of this undoubtedly found its way into the U.S. market.

The Customs Service has undertaken a number of enforcement efforts, including reducing China's official MFA quotas as a penalty for transshipment. In 1997, China and the United States reached a four-year textile trade agreement that, among other things, strengthened penalties and reduced quotas in 14 apparel and fabric categories where there had been repeated instances of transshipment. Nevertheless, in May 1998, the U.S. trade representative and U.S. Customs brought an action against China under the agreement, imposing $5 million in charges on textiles illegally transshipped.

Each year, a list of companies involved in transshipment is released. On the most recent list, 23 of the 26 companies assessed penalties for illegal transshipment were from China, Hong Kong, or Macao. Despite such enforcement efforts, China continues to ignore the MFA.

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¶ *Prison Labor.* China has an extensive system of prison work camps that produce products ranging from apparel to tools and machinery. Often, prison work forces are leased to private firms to assemble or manufacture various products. Under a 1930s U.S. law, it is illegal to import into the United States anything made with prison or forced labor.

Over the years, it has been alleged that a number of imports from China violated this law. In 1992, the Bush administration concluded a bilateral agreement to halt the export of goods made with forced labor and to hold periodic consultations between customs officials from both countries.

Despite the agreement, advocacy groups have produced evidence that various Chinese companies exporting to the United States are involved in prison labor commerce, products made with prison labor have been imported into the United States, and Chinese companies are prepared to export such products to the United States.

Because it is hard to distinguish goods made by prison labor from others, it is impossible to credibly estimate the size of the problem. However, the State Department's most recent "Report on Human Rights for China" found that Chinese cooperation under the 1992 agreement had been "inadequate" and that when complaints were brought by the United States, "the Ministry of Justice refused the request, ignored it, or simply denied the allegations made without further elaboration." The report also notes that Chinese officials have attempted unilaterally to define Chinese work camps as not covered by the 1992 agreement—an interpretation that renders the agreement virtually meaningless.

This review of the evidence shows that there have been serious enforcement problems with every recent trade agreement with China. In some cases, the agreements produced improvements in Chinese trade practices, but Beijing's implementation still fell far short of the letter and spirit of these pacts. Without the extensive U.S. enforcement effort on intellectual property, little of the progress that has been made would have come about.

China's defenders often claim that its record is no worse than that of other countries. Certainly, a number of U.S. trading partners appear to have cheated on trade agreements over the years. Japan is most often cited.

It is difficult, however, to find another trading partner whose compliance with every significant trade agreement has been so deficient. Furthermore, difficulties go beyond China's mere ignoring of provisions offensive to important domestic constituencies. As Chinese leaders themselves concede, China lacks the rule of law. In the trade arena, this means that it is difficult or impossible for Beijing to direct policy changes that actually bind China's diverse ministries, state-owned enterprises, and provincial governments.

Unfortunately, the World Trade Organization is no magical solution. Indeed, the WTO itself is a law-based institution. It is unclear that it will be able to police a country that operates without a stable, reliable legal system. Trade policies in China are often made in secret, leaving no paper trail. It may be impossible even to document the existence of objectionable Chinese trade practices, much less win WTO rulings against them.

To some, enforcement may seem a side issue. But none of the benefits ascribed to China's accession to the WTO will be achieved without it. If China simply ignores the terms of the WTO, as it has other agreements, not only will the benefits vanish, but lasting damage will be done to the credibility of the WTO.

Furthermore, no one knows how long China will be governed by relatively reform-minded leaders. Given the uncertainties of Chinese politics, a regime led by the military or hardline elements could easily emerge. Such a regime would pose enormous challenges for WTO enforcement, as well as on many other fronts.

In fact, China's membership in the WTO will help reformers like Zhu Rongji only if it entails compliance. Thus, an energetic effort to enforce the WTO in China is the best contribution the United States could make to the cause of reform. But American performance in this area inspires no confidence.

In light of Washington's weak and unpredictable pattern of enforcement and China's poor record of compliance, Congress should construct a vigorous enforcement procedure. This could take the form of annual reviews with a direct role for Congress, backed up by the promise of trade sanctions. Such a mechanism should be made a quid pro quo for permanent most-favored-nation trading status for China. Without it, there are good grounds to doubt that enforcement of the WTO will be a priority for the United States.

In the coming months, this issue will be discussed in a highly politicized atmosphere. But our relationship with China will last beyond next fall's election. Even if, as seems likely, China joins the WTO this year, bringing it into compliance with the WTO's provisions will take decades. Success will require the vigilance of Congresses and administrations for many years to come. If *this* Congress and *this* administration can build a sturdy framework for attending to these important issues, they will perform a great service to future Congresses, future presidents, the cause of reform in China, and America as a whole. ♦

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You deserve a factual look at...

"Sacrifices for Peace"

What else does the world expect Israel to do?

There is persistent pressure on Israel, mostly from the Arab states, of course, but also from such good friends as the United States, to bring "sacrifices for peace." It is understood that these "sacrifices"refer to greater "flexibility" in dealing with the Arabs, but mean primarily that Israel should allow its dismemberment, in order to bring peace to the region.

What are the facts?

A Bizarre Concept. The concept to bring "sacrifices for peace" is a new one that has never before found application in world history. It was created by Arab propaganda to induce Israel to agree to its dismemberment, to give strategic assets to those who are determined to destroy it, and to allow such self-destructive events as the creation of a hostile state in its heartland and the division of its capital.

Since its creation in 1948, Israel has been subjected to almost constant Arab terror, to unceasing Arab aggression, and to three major wars. Israel emerged victorious from each of these wars. In the Six-Day War, it recovered its heartland of Judea/Samaria (the "West Bank") and the eastern part of Jerusalem, its capital city, that had been occupied by the Jordanians; it captured the Golan Heights from Syria, which had been used for decades to shell and spread terror over much of northern Israel; and it conquered Gaza and the Sinai Desert that had been used by Egypt as staging ground and invasion route to Israel.

> Here are three good sacrifices that the Arabs could bring for peace: (1) Abandon the insistence on recovering the Golan; (2) Stop the clamor about the division of Jerusalem; (3) Disarm the Palestinian "police".

Many Sacrifices for Peace. In order to achieve peace with its neighbors, Israel brought sacrifices for peace that have no precedent in the history of the world. For peace with Egypt, Israel returned the entire Sinai. There is little thanks on the part of Egypt for this generosity and this sacrifice for peace. In the over 20 years since the peace treaty between Egypt and Israel was signed, Egypt has still not established normal channels of cultural and commercial relations with Israel. The controlled Egyptian press spews daily anti-Israel venom. President Mubarak has never visited Jerusalem. It is the coolest possible peace. A sacrifice for peace brought in vain—probably a major act of folly on the part of Israel.

Israel made sacrifices for peace by signing a peace treaty with Jordan. In that peace, Israel granted Jordan a large yearly allowance of fresh water from its own dwindling and meager resources and accepted a petty demand for "border rectification"—yielding of land. That peace is almost as cold as that with Egypt.

As for Syria, no offered sacrifice for peace seems to be sufficient to satisfy its dictator, President Hafez Assad. Nothing will satisfy him and he is unwilling to consider even an ice-cold peace, except on terms of Israel's total surrender of the Golan Heights. Unfortunately for Israel and for the world, the current Israeli government seems to be seriously considering such a "sacrifice for peace".

The greatest sacrifice for peace that Israel has brought was the resuscitation of the bankrupt and moribund PLO terror organization and the acceptance of its "chairman" Yasser Arafat as a negotiating partner. In this ill-advised process, foisted on Israel by world pressure and by a previous government, Israel has made far-reaching and existential sacrifices and concessions. It has yielded control of the Gaza Strip and of all major "West Bank" cities to the Palestinian Authority and has agreed to detailed plans to grant further autonomy to the Palestinians. In what is probably the ultimate folly in this process, Israel has tolerated the formation of a Palestinian "police force" (actually an army) of 40,000 men—the largest police-to-population ratio in the world (!)—and has equipped this "police force" with a complete arsenal of automatic weapons. As the world now knows, these weapons were turned on Israeli soldiers and civilians at the very first opportunity that the Palestinian leaders provoked.

The Arab countries, not Israel, are the oppressors in the Middle East; it is they who are killing peace. The PLO, apart from the bloody crimes that it has committed against Israel, has ordered massacres of over 100,000 Lebanese civilians between 1982 and 1990. It has now established a virtual dictatorship in the territory allotted to it—torture and terror are the order of the day. In Egypt, thousands of Copts have been killed and their churches burned. President Assad of Syria has occupied Lebanon and has killed and tortured thousands. Iraq, under its dictator Saddam Hussein, is a rogue state attacking its neighbors and killing its own citizens, including with poison gas. Saudi Arabia is a monarchical tyranny. It prohibits the exercise of any religion except the most orthodox form of Islam. Jews are not allowed in the country. Christians are jailed or worse. Sudan is engaged in the systematic slaughter and enslavement of its black African people. How strange that nobody asks the Palestinians or any of the Arab states to bring any sacrifices at all for peace. Only Israel, an island of peacefulness and civility in that ocean of violence and turmoil, is incessantly being asked to bring such sacrifices. Here are three good sacrifices that the Arabs could bring for peace: (1) Abandon the insistence on recovering the Golan; (2) Stop the clamor about the division of Jerusalem; (3) Disarm the Palestinian "police." Billy clubs are good enough for London Bobbies. Why should any more be needed to patrol Nablus, Hebron and Bethlehem?

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Roosevelt and Walker. UPI / Corbis-Bettmann.

Nothing to Fear But FDR

Jimmy Walker and Roosevelt's other enemies.

By Alvin S. Felzenberg

By coincidence or design, here in the midst of our latest presidential election are two books about the battles of a previous president. The ways in which he prevailed will interest all who study the presidency and may even entice us to speculate how our present candidates would confront similar challenges—for the president in question is Franklin D. Roosevelt, one of the shrewdest politicians in American history.

In *Once Upon a Time in New York: Jimmy Walker, Franklin Roosevelt, and the Last Great Battle of the Jazz Age*, Herbert Mitgang tells the story of Roosevelt's resolution of a threat to his 1932 Democratic presidential nomination: the charges of corruption leveled against the popular New York City mayor, Jimmy Walker. Each of Roosevelt's options entailed risk. As governor, he had the authority to remove Walker from office. If he did, he would certainly anger Walker's Tammany Hall allies, ruining his ability to lead a united New York delegation to the Democratic National Convention. If he did not, he risked alienating western progressives and southern agrarians who detested all Tammany symbolized.

Alvin S. Felzenberg is a visiting fellow at the Heritage Foundation.

In *FDR and His Enemies*, Albert Fried discusses five other men who put obstacles in Roosevelt's path. These were Alfred E. Smith, his predecessor both as governor of New York and Democratic presidential nominee; Father Charles E. Coughlin, the popular radio priest; Huey Long, governor of Louisiana and erstwhile populist; John L. Lewis, president of the mineworkers' union and founder of the CIO; and Charles A. Lindbergh, aviator and national hero. Each of these men represented an alternative to Roosevelt's policies. The potential damage to him came from their popularity, their special appeal to significant elements of Roosevelt's constituencies, and their ability to exploit the communication tools at which Roosevelt had proved a master, primarily radio.

Once Upon a Time in New York
Jimmy Walker, Franklin Roosevelt, and the Last Great Battle of the Jazz Age
by Herbert Mitgang
Free Press, 259 pp., $25

FDR and His Enemies
by Albert Fried
St. Martin's, 288 pp., $27.95

Unlike the avowed enemies, however, Jimmy Walker never intended to block Roosevelt's path. The Appellate Division of the New York State Supreme Court triggered that turn in 1930, when it named retired Court of Appeals judge Samuel Seabury to investigate irregularities in the city's courts. Seabury insisted on and received permission to carry his probe into "any and all dark corners." After he demonstrated that a sheriff had accumulated $500,000 over six years on an annual salary of $8,500, Roosevelt removed the sheriff from office. When the Manhattan district attorney came under fire for his office's cavalier attitude toward racketeering, graft, and kickbacks, Roosevelt invited Seabury to investigate as his personal "commissioner." Before long, the Republican State Legislature granted Seabury permission to examine the activities of every official in New York City's government.

Seabury's investigation invites comparison with Kenneth Starr's more than sixty years later. Jimmy Walker and his henchmen could have written the playbook followed by James Carville, Lanny Davis, and the rest of Clinton's team. (Courtesy of the sixty lawyers and researchers in Clinton's White House Counsel's office, perhaps they did.) Seabury understood at the outset that, given the notoriety and popularity of his target, he had to win his

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Free Press

Governor Roosevelt and Mayor Walker, in the days before the Seabury investigation.

case in both the courtroom and the court of public opinion. He said at the first gathering of his staff, "The public will not be aroused to an awareness of conditions . . . through a series of graphs, charts, and reports. We must divorce this investigation, as far as is possible, from legalistic machinery."

Mindful that he would present his findings to an elected official, Seabury kept Roosevelt abreast of his progress. He retained as his consultant Columbia professor Raymond Moley, who was simultaneously assembling the "brain trust" that would follow Roosevelt to Washington. Seabury proved especially adept at cultivating the press to assist his investigation. His staff provided "special treatment" to reporters who located missing witnesses and leaked information to favored columnists and broadcasters.

Seabury also anticipated the kind of defense Tammany Hall would mount. Walker moved quickly to besmirch the prosecutor, to accuse his opponents of partisan motives, to draw attention to the cost and duration of the publicly financed inquiry, to castigate the probe as a thinly veiled attempt to overturn the results of an election, and to insist that the prosecutor was prying into private life rather than public deeds.

When Walker talked about "private life," he meant the source of his secret bank accounts and the financing of his luxury apartment and trips abroad. He maintained that as long as those were not public funds, they were no one's affair but his. Walker was less concerned about the publicizing of other aspects of his private life, such as his public visits to speakeasies with his mistress, showgirl Betty Compton—though he brought his long-estranged wife to sit behind him at the hearing Roosevelt called in the governor's chambers. Other arrows in the Walker quiver were the claims that attacks on his integrity "besmirched the character of 130,000 city employees" and had "undermined the goodwill and financial standing of the city." His most creative line of defense was that he could not be removed in his second term for illegalities he had committed in his first.

Neither Roosevelt nor Seabury was surprised that Walker preferred to play to the stands rather than address the allegations against him. His defenders mounted rallies complete with bands whenever he came to Albany. Inside the governor's chambers and without, Walker presented himself as a victim of financial interests seeking to overturn the decision of the voters to retain him as mayor. Rarely did he miss an opportunity to link Seabury and Roosevelt to "Wall Street interests" and himself to New York's downtrodden.

But Roosevelt won plaudits even from his political detractors for his (undoubtedly rehearsed) decorum throughout the proceedings. And when it appeared Roosevelt was ready to act, Walker—perhaps pushed by Democrats sensing the tide had turned in Roosevelt's direction and unwilling to jeopardize future federal patronage—abruptly resigned as mayor. He threatened to seek vindication by running in the special election to fill the office he had vacated. Instead, he departed for Europe, where he remained until he was certain he would not be prosecuted.

In *Once Upon a Time in New York*, Mitgang does not speculate about what role Roosevelt played behind the scenes to produce this outcome. Given that all the central figures in the case—Roosevelt, Walker, and Seabury—were Democrats, Roosevelt may have operated through other players in the party. Such at least is the pattern described in *FDR and His Enemies*. As Fried shows, Roosevelt rarely confronted his enemies head-on. His preferred methods were to attack them through surrogates (a favorite was Interior secretary Harold Ickes) or work behind the scenes through third parties. When he appeared to throw himself into the thick of things, it usually came in a carefully crafted quip at a press conference in response to a planted question.

Two of Roosevelt's opponents, Coughlin and Lewis, would gladly have settled for bringing Roosevelt down, while Smith and Long saw themselves as possible replacements (Lindbergh might have as well, had he not found the theatrics of democratic politics abhorrent). If they had been able to transcend their differences and work in concert—or if Roosevelt had been less adept at exploiting their weaknesses, goading them to self-destruction, or constructing traps for them to fall into—they might well have succeeded.

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Top and middle: UPI/Corbis-Bettmann. Bottom: Free Press.

Top: Huey Long. Middle: Father Charles Coughlin. Bottom: Samuel Seabury interrogates Jimmy Walker before the grand jury.

As he launched the New Deal, Roosevelt found himself besieged with criticism from both the right and left. Long and Coughlin dismissed Roosevelt's plans as palliatives that would not redress the economic disaster of the Great Depression. Long proposed immediate redistribution of the nation's assets (indeed, the increasing "radicalism" of the New Deal may derive from Roosevelt's desire to prevent Long from gaining a foothold in his natural constituency). Coughlin preferred to blame the nation's ills on financiers, Jews, and bankers, who, he insisted, hoarded precious commodities, thereby creating shortages.

Angered at Roosevelt's failure to consult him and perhaps jealous that his protégé had leapt ahead of him on the political ladder, Smith drew closer to the people Roosevelt, Long, and Coughlin alike called the "economic royalists." Through the Liberty Lobby, Smith (whose years as governor historians often cite as the state precedent for the New Deal) railed against deficit spending, increased federal power, unaccountable powerful bureaucracies, and the decline of individual initiative.

Of Roosevelt's three domestic critics, Long represented the most immediate threat, especially within the Democratic party. After an assassin's bullet silenced Long, Coughlin became Roosevelt's leading rival on the left. Eschewing direct confrontation with a popular radio personality, Roosevelt attacked him through others. He banked that the priest would overestimate his influence with his radio audience and overreach. This he did when he boasted that his handpicked third party candidate William Lemke would pull nine million votes in the 1936 election. When he attained less than a tenth of that, the priest, temporarily keeping a promise, voluntarily departed the airwaves. Smith made a similar mistake when he "took a walk" and endorsed Roosevelt's Republican opponent, Alf Landon. Smith's real ability to harm Roosevelt was within the Democratic party, and his departure from the fold left the president the master of that house.

It was in his duel with isolationists that Roosevelt proved most skillful. An ally of Roosevelt on domestic matters, John L. Lewis nonetheless rejected the president's plan to aid Britain and France. He saw little need to send American youths to assist "imperialist" nations and lambasted Roosevelt for investigating "fifth columns." Though the rest of the left rejected isolationism after Hitler invaded the Soviet Union, Lewis clung to his position and even endorsed Roosevelt's 1940 opponent, Wendell Willkie.

Father Coughlin returned to the air two months after his voluntary exile. But his anti-Semitic outbursts and pro-Axis sympathies were drawing criticism from American Catholics. Once the United States had entered World War II, the Justice Department sought to censor Coughlin periodicals it considered seditious.

Eventually his archbishop ordered Coughlin to cease commenting about politics. Fried suggests the archbishop acted at the request of a delegation of lay Catholics close to Roosevelt—though he paints a picture of the archbishop, disgusted with Coughlin, eagerly awaiting their visit.

Of all the characters covered in these two books, Roosevelt had his most serious confrontation with Charles Lindbergh. How he orchestrated his showdown with the famous aviator illustrates his leadership style. It was also important because, of all his foes, only Lindbergh offered a competing vision of how the United States should face the great crisis of the twentieth century. Moreover, Lindbergh had at his command more resources with which to take on Roosevelt than any of the president's other tormentors.

While neither a Nazi nor a fascist, Lindbergh convinced himself that Germany would prevail in its conquest of Europe. He urged Britain and France not to resist what he insisted was its superior airpower and argued strenuously against American intervention. Lindbergh was hardly the only isolationist to hold these views.

But he went further than most when he insisted that Nazi Germany could be a force for good in the world by bring-

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ing to heel an even greater menace, Stalin's Soviet Union. He insisted that Britain and France had been wrong to go to war in defense of Poland—for if they had not, he argued, Hitler would have invaded Russia earlier than he did.

After Congress passed by a wide margin Roosevelt's lend-lease assistance (Lindbergh had testified against it), the president decided it was safe to make his move. Ickes denounced Lindbergh as a "provocateur," a "fellow traveler," and an "appeaser," while Roosevelt "off the record" suggested reporters ascertain his feelings on the subject. When asked why Lindbergh had not been called up to active duty as other reserve officers had, Roosevelt reminded them of why union forces could not fully trust Copperheads who held government posts during the Civil War. Angered, insulted, and provoked, Lindbergh hastily resigned his commission in the Army Air Corps.

Insisting that Lindbergh's function was to "knock down the will of his fellow citizens to resist Hitler," Ickes began referring to him as the "Knight of the German Eagle," referring to a medal Hermann Goering had given Lindbergh before the war. When Lindbergh sought readmission to the Army during World War II, Secretary Henry L. Stimson wrote that he was "personally unwilling to place in command any man who had such a lack of faith in our cause." Whether because he shared Stimson's assessment or was just indulging his own vindictiveness, Roosevelt kept him out.

Both Mitgang and Fried end their works by hailing the changes Roosevelt brought to American politics. Mitgang credits him with creating a "welfare" state that "actually preserved the American free enterprise system." Fried sees him as an instrument of the "modern state, centralized and ever-expanding, as guarantor of social justice and national security."

But the real lesson of Franklin Roosevelt, taught in *Once Upon a Time in New York* and *FDR and His Enemies*, is that steering the ship of state requires a chief executive of Rooseveltian skill, flexibility, and cunning. ♦

Original Dissent

Keith Whittington makes the case for constitutional law. **BY JEREMY RABKIN**

Whether the Constitution is most properly interpreted by its "original intent" was a subject of intense controversy twenty years ago, when such conservative scholars as Robert Bork accused the Warren and Burger Courts of spinning new constitutional doctrines out of mere political fashion.

Constitutional Interpretation
Textual Meaning, Original Intent, and Judicial Review
by Keith E. Whittington
Univ. Press of Kansas, 320 pp., $39.95

Constitutional Construction
Divided Powers and Constitutional Meaning
by Keith E. Whittington
Harvard Univ. Press, 352 pp., $49.95

By now, however, the active participants in that debate have all moved on. It takes a young, energetic scholar to start over with a subject that has been exhausted for most others—a scholar, in fact, like Keith Whittington, an assistant professor of politics at Princeton University, who has recently produced a pair of books: *Constitutional Interpretation*, which proposes a new argument for interpreting the Constitution according to its "original intent," and *Constitutional Construction*, which defends the ability of the Congress and president to define, independent of the courts, constitutional practice in at least some areas.

Both these volumes display the labored earnestness that marks authors too recently released from graduate school. Still, they offer renewed vigor to a tired field and should provoke some fresh thinking by constitutional scholars. Whittington seems to have forced himself to read everything written on this subject over the past twenty years. He pursues the argument from the slapdash polemics of law reviews to the murky depths of French deconstructionist theories. His seventy-odd pages of endnotes in *Constitutional Interpretation* record his qualified approvals, nuanced points of difference, and firm rejoinders to every theorist, commentator, and scholar he has consulted.

In the body of his text as well, he maintains a relentlessly academic tone. He takes all the competing arguments at face value, almost never stopping to speculate about the partisan motives that prompted them. So he carefully dissects the claims of left-leaning critics from more than a decade ago, without noticing that a great many of them have turned to *invoking* originalist arguments: Today, it is the liberals who protest against activism when a conservative Supreme Court justice asserts a new doctrine of states' rights or limitation on racial preferences.

Whittington seems indifferent to the significance of such reversals. He doesn't discuss recent cases—indeed, he discusses hardly any cases at all. The half dozen listed in the index are almost all famous milestones, mentioned as such in the text without much effort to explain how such cases would have turned out under an originalist reading of the Constitution. *Constitutional Interpretation* is instead preoccupied with a theory. If this makes Whittington unusual, it also provides a certain force to his argument. It allows him, for example, to devote considerable space to such figures as Thomas Hobbes and Jean Bodin (the French jurist who coined the term "sovereignty" nearly a century before Hobbes). No one much cares today about the partisan leanings

Jeremy Rabkin teaches constitutional law at Cornell University.

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Hobbes may have betrayed during the English Civil War or Bodin's sympathies in the battles between French Huguenots and Catholics.

The great contribution of *Constitutional Interpretation* is that it seeks a political theory to undergird the jurisprudence of original intent. The question that cuts most deeply against originalism is this: Even where we can determine what the Constitution meant in the eighteenth century, why should we feel bound by the views of a vastly different country in a time so distant?

The old answer (as we find it, for example, in *Federalist* 78) was that courts should enforce constitutional limits on legislatures because the Constitution is the ultimate expression of popular will. But why should the will of the people be "sovereign"? As Whittington reminds us, the original theorists of sovereignty assumed that a sovereign must have an active, continuous claim on power, which hardly describes "the people" in our system. If the citizenry is sovereign, shouldn't that mean that the people by referendum or opinion poll can override legislative judgments and judicial rulings—and perhaps even the Constitution? But if the people are bound by judges, in what sense are they sovereign?

Whittington tries to make sense of these conundrums by positing a theory of "potential sovereignty": As a people, we have authorized the Constitution but retain the ultimate authority to change it—the ultimate authority to take back the power we initially exercised: "We the People . . . do ordain and establish this Constitution," as the preamble proclaims. This notion of potential sovereignty does capture something of what the Founders understood by constitutionalism. But it's also unrealistic—or, more politely, it's what we call a metaphor, a term Whittington himself embraces.

Yet, metaphors can be powerful vehicles for organizing our ideas. Those who scoff at talk about "the people" are often quite comfortable talking about "this country" or "the United States," metaphors to which they attribute various aims and concerns. Most talk about "the law" has a similar quality. Law might indeed be described as a metaphor for a complex social reality. Is it still against the law to commit perjury, even if powerful people can use proven techniques to defy this law? How many episodes of corruption or evasion would suffice to prove that the law has no meaning?

The strongest arguments for Whittington's theory are those he directs against the alternatives. If we say it is unrealistic to posit a people who are able to deliberate at peak moments on great issues, we are left with alternatives that are still more unattractive. Either we posit that the people may change the Constitution inadvertently by electing politicians who ignore it (in which case constitutionalism itself seems a far-fetched notion), or we posit that the people must simply submit to wiser heads and not think about constitutional questions at all (in which case the notion of popular government looks like a thin metaphor for social control by elites).

If continuity and stability recommend an originalist philosophy, why shouldn't they also provide support to long-established precedent?

If one accepts the notion of popular sovereignty embodied in a constitution, however, it does seem to follow that judges have no business going beyond what the people have already agreed to—which means that judges should stick to original intent as much as they can. This is a fairly compelling argument, after all. And Whittington gives it more force by drawing out its implications for the way we do—and don't—think about our system. Judicial disdain for popular sovereignty has a self-fulfilling quality: The more judges feel free to improvise new constitutional doctrines, the harder it is for anyone to imagine that the people are the authority behind the Constitution and the easier it becomes to ignore the originalist doctrine on which popular sovereignty rests.

For all its abstract force, the theory has (though Whittington does not acknowledge it) an inherently conservative slant. It takes for granted that the authority of past generations can be attributed to the present, unless a supermajority of the current generation determines otherwise. Thus, the theory puts a premium on continuity over change, deliberation over spontaneity, and commonality over diversity. It is powerful and perhaps more compelling than the alternatives. But it is not likely to satisfy those who disagree with its underlying, conservative assumptions.

There is a further difficulty, which is, ironically, highlighted by Whittington himself in his second book, *Constitutional Construction*. Here he looks at pivotal moments in which the Constitution has been given a certain interpretation by Congress and the president in settings where the courts played little role. In four case studies, from different eras of American history, he demonstrates that politicians often stake major policies on what they see—or claim to see—as a logic dictated by the Constitution. He describes, for example, the crisis of the 1830s, when South Carolina claimed the authority to nullify improper federal laws. While "nullification" was repudiated, most politicians acquiesced for a time in South Carolina's claim that tariffs could be used only to raise revenue and not to protect domestic industry. As a constitutional construction, this was plausible as well as politically convenient. But a few decades later, the doctrine was abandoned, once its political appeal as a device to avert sectional conflict had been mooted by the Civil War.

Whittington takes up several other episodes of constitutional construction: the effort of Jefferson's followers to impeach a Federalist Supreme Court justice in 1804, the debate over Andrew Johnson's impeachment in 1868, and the debate over Richard Nixon's abuses

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in 1974. These episodes certainly provoked a good deal of constitutional argument, but, compared with the antebellum tariff debate, they also yielded less clear-cut "constructions." Whittington's choice of cases stacks the deck in favor of his conclusion that constitutional construction must be merely provisional.

But some constructions have established enduring and unchallenged constitutional norms. Even in the debates over the Nixon presidency, for example, political advocates on all sides conceded that the president has certain broad powers as commander in chief, though some scholars have insisted the Constitution confers this title without any definite authority. When a construction has been accepted for many decades (or, as in this case, for most of American history), it is strange to regard it as having no more force than a recent partisan claim.

One might deny that long established precedent should outweigh clear conclusions about original intent, and this seems to be Whittington's view in *Constitutional Interpretation*. But it is hard to see why long acquiescence in a particular interpretation does not indicate some sort of tacit consent. If continuity and stability are virtues that recommend an originalist philosophy, why shouldn't they also provide support to long-established precedent? It's not obvious why it should be of decisive importance that such precedents are not entirely in line with the Constitution's original intent.

Moralists may demand that unjust rules be corrected, no matter how old or seemingly settled in practice. But Whittington rests his own argument on the doctrine of sovereignty—a doctrine which was designed precisely to avoid such conflicts. Are we really required to rake up old disputes in the name of a doctrine that was supposed to settle disputes?

These objections do not refute Whittington's argument but they suggest that, for all his earnest efforts in these books, he has not exhausted his own case. In the meantime, though, he has earned a respectful readership for any sequels he may offer in the coming years. ♦

The Price of Kultur

High culture defends price-fixing in the world of German publishing. **BY K. MICHAEL PRINCE**

Germany, the self-proclaimed "land of poets and thinkers," has been doing a lot of thinking lately about German poetry—and German novels, and German monographs, and the whole of German literature. As the workhorse of modern Teutonic letters, Günter Grass, put it: The German writer appears to be dying out.

The central concern is that Germans are not reading much German literature anymore, certainly not like they did in the good old days of Grass, Böll, and Lenz—let alone the really good old days of Mann and Brecht, or the really, *really* good old days of Goethe and Heine. They've hardly turned a page of a German novel since Peter Schneider's 1983 *Wall Jumper* or Christa Wolf's 1988 *Cassandra*. And if there's anything worse than the fact that German readers have become estranged from their own authors, it's that they've taken up British and American authors instead.

The trend is undeniable. The bestseller list compiled by a leading trade journal, for example, shows that only a quarter of the top hundred titles in Germany last year were by German-speaking writers. Within the top ten, there was only one German speaker; within the top twenty, only three. By contrast, forty-two of 1999's top hundred sellers were British or American works—and of both the top ten and top twenty, half were translations from English.

Some of the arbiters of German *Kultur* have attributed this development to the market structures of the world's publishing industry. It's easier, they say, for a publisher to push a bestseller by the latest American *Wunderkind* onto the German market than it is to do the same for an "unknown" German novel. That may be true, though one wonders why, when Bertelsmann, the world's largest publishing conglomerate, is a German company. (The typical answer is to raise the specter of sinister multinational corporations, which have no loyalty to tongue or territory.)

Most of Germany's intelligentsia, however, have been looking inside Germany for the cause of the crisis. Some assign the blame to a decline in schooling: Among college-educated Germans, for example, it has become increasingly difficult to find any who have read, or even seen a production of, Goethe's *Faust*. But this hardly explains the failure of *contemporary* German writers. Why can't they produce books that people want to read? Why can't they appeal to the "elevated middlebrow," to the folks who buy most of the books and who don't care for the thickly brewed and uncompromisingly demanding literary cathedrals known as "typically German"? Speaking in September to *Publishers Weekly*, Munich publisher Karl Blessing mentioned that "most German authors seem to lack the storytelling talents that . . . editors have always looked for—and usually find abroad."

One thing the stars of German high culture have been adamant about is the necessity to preserve the existing bureaucratic protection for their work. The specific mechanism is something called "retail price maintenance," the *Buchpreisbindung*, or "BPB," for short. This neat little arrangement (in operation since 1883) permits publishers to set the price at which stores must sell their books. There's no buying in bulk

K. Michael Prince is a writer living in Munich, Germany.

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or discounting, and any bookshop that cut prices would simply be dropped from the publishers' distribution. The BPB, its defenders claim, guarantees for booksellers an efficient ordering system, for publishers a uniform distribution, and for readers a wide variety of books.

The system is also supposed to help authors, as the profits from best-sellers finance the publication of risky first-time authors. But the actual benefits to writers are a little vague. This sort of cost-shifting is already how market-driven publishing works outside Germany, without benefit of the BPB. And no German publisher is required to aid starving artists, because the BPB is an industry agreement, not law. If a publisher prefers to pocket his profits rather than lift some dreaming spirit out of the shadows, that's his business.

Nonetheless, hordes of prospective German literary geniuses have been enlisted as poster boys for the fight against the European Union's recent effort to tear down trade restrictions like the BPB. The French have a similar mechanism, the "loi Lang" (named after former culture minister Jack Lang).

The French system, however, is encoded in federal statute, and thus exempt from EU attack. And so Germany has been left to lead the fight for cultural self-determination against the bureaucratic levelers in Brussels.

In this European culture war, the American example is repeatedly cited as what can happen in a BPB-less world. The system's defenders paint a scene of horror in America involving the mass-death of independent book-dealers, the ever expanding power of an ever smaller number of bookstore chains and publishing conglomerates, and the growing trivialization and commercialization of literature. But as those evil EU bureaucrats point out, the same trends are evident within the BPB-protected marketplaces of Europe as well.

In a June 1999 interview in the newsweekly *Die Zeit*, German culture minister Michael Naumann compared himself to a lonely lookout on board the *Titanic*, anxiously warning of the icebergs ahead should the European Union decide to tear down the BPB. In this case, he's not so lonely.

Just as it appeared that the EU's commissioner for competition, Mario Monti, was about to rule against the BPB, French culture minister Catherine Trautmann announced in November of last year her government's intention to seek a Europe-wide system (modeled on the "loi Lang") during France's six-month term in the EU presidency later this year. Newly appointed EU culture minister Viviane Reding (of Luxembourg) added that "If we're to protect cultural diversity, there must be regulatory exceptions for cultural products."

It was all too much for Commissioner Monti, who on February 9 gave up the seven-year struggle and announced that the established structure would remain largely intact. But, maybe there was no reason to fret in the first place—regardless of the fate of the BPB. After all, German novelist Bernard Schlink's *The Reader* has recently broken out to become a runaway international best-seller. And even within Germany itself, a new generation of writers has emerged, making waves in the German publishing industry after capturing the attention of a respectable number of German readers.

The appearance of a few media-savvy young writers does not mark the reversal of a trend, but it does show promise. Should we attribute that to the magic of the BPB? Hardly. Old-fashioned market forces are at work here—nothing else. ♦

The Moral Landscape

Using the Hudson River School to fight against the current. BY SABRINA SAVODNIK

You can see it in Sanford Robinson Gifford's 1862 *Kauterskill Clove*: serenity tinged with a hint of the sublime, tinged with a touch of the morally uplifting, tinged with a trace of the historically enriching, tinged—well, mostly just tinged. Everything that's praiseworthy, and everything that's not, in the nineteenth-century paintings of what's come to be known as the Hudson River School derives from this essential tinginess.

Knights of the Brush
The Hudson River School and the Moral Landscape
by James F. Cooper
Hudson Hills, 109 pp., $35

The romantic period of American landscape art began about a quarter of the way through the 1800s and lasted until about 1875, and its flowering is the topic of James F. Cooper's recent volume, *Knights of the Brush: The Hudson River School and the Moral Landscape*. Gifford's *Kauterskill Clove* shows a skillful use of light, a talent for minute detail, and a clever arrangement of subject. But, beyond all that, Gifford's painting offers a dual image of what Cooper believes American art can and should be. In the midst of a decorative landscape, the artist combines traditional values of spirituality, aesthetics, and history to produce a painting that Cooper claims can be appreciated by both serious critics and the general public—a painting, in other words, that could resolve the antagonism of insiders and outsiders that bedevils the world of modern art.

Gifford was one of many painters in the Hudson River School who explored the intersection of the moral and the natural landscapes of America. He joined Thomas Cole (often considered

Sabrina Savodnik is a staff assistant at the American Enterprise Institute.

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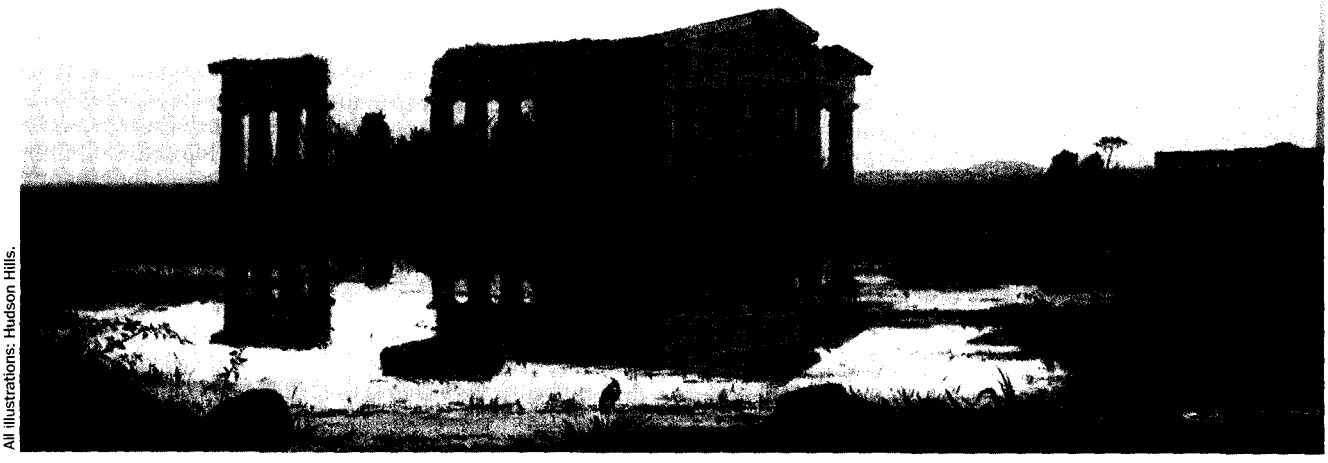

All illustrations: Hudson Hills.

Above: Jasper Francis Cropsey's Temple of Neptune, Paestum *(1859). Opposite: Sanford Robinson Gifford's* Kauterskill Clove *(1862).*

the father of the Hudson River School), Frederic Church, Jasper Francis Cropsey, Albert Bierdstadt, Asher Brown Durand, and many others. From the daunting mountains of Cole's *The Garden of Eden* (1828) and the violent waterfalls of Church's *Niagara* (1857) to the soft light of Durand's *Kindred Spirits* (1849), the highly detailed landscapes of the Hudson River School promoted a sense of national pride by glorifying the natural beauty of young America. Indeed, despite the lack of history in the newly established nation, Cole and his colleagues recognized in the rich wilderness of America a moral lesson that could draw out the best of the older European traditions.

It is, of course, this recognition of America that has been most thoroughly destroyed in the years since those painters worked. In *Knights of the Brush*, Cooper explores the Hudson River School's presentation of history, Christianity, light, and beauty—all to show how each of these has dissolved in the art of the late twentieth century. And he presents a proposition that on its face seems exactly backwards but that comes to seem at least possible as he develops his case: The erosion of values in art leads to the breakdown of morals and culture.

Cooper's aim is to explain how art can be used to renew Western ideals and to restore American culture, primarily by reintroducing beauty, virtue, and spirituality. Just as in the nineteenth century the Hudson River School attempted to preserve values with art, so in recent years a group of artists and writers—among them Cooper, Frederick Hart, and Tom Wolfe—have claimed the title of "centrists" and fought to reclaim art from its postmodern claws. A few months before his death last August, Hart told an interviewer, "We've entered a generation that's forgotten how to do it right." And Cooper, like Hart, believes that the promotion of artists who remember how to do it right has the possibility of restoring moral value to art—and thereby to culture.

In a certain sense, that makes Cooper an optimist about the future of America. During the nineteenth century, there were concerns perhaps similar to our own about the fading of order, spirituality, and beauty. In the eyes of the artists in the Hudson River School, the values that ensure a rich and prosperous Republic are the ones that prevailed during antiquity. Classical life was the model of virtue, for it illustrated with its myths and history the ideas of liberty and justice on which America was founded. Thus the painters of the Hudson River School extracted images from antiquity and often transplanted them into American settings, as Jasper Francis Cropsey did in *The Spirit of Peace* (1851) or more significantly in his *Temple of Neptune, Paestum* (1859)—a painting of a crumbling temple in a barren landscape. Indeed, such symbols of antiquity not only allowed Cropsey and his contemporaries to indulge the typically Romantic love of ruins, but served as a cautionary moral lesson—reflecting the likely results of decaying civic virtue. Cropsey's painting, devoid of any life other than a small bird in the foreground, warns the country of the danger of losing virtue and embracing decadence. An early environmentalist, Cole also sought to remind the nation of the intersection of the moral value of American liberty and the beauty of American wilderness.

This leader of the Hudson River School brought his themes together best in his three-part series, *The Course of Empire* (1836). In the first, *The Consummation of Empire*, Cole shows the beauty of Roman buildings, figures, and landscapes, all suggesting a society of grandeur, order, and justice. Yet, the third painting in the trilogy, *Destruction*, shows harmony and order dissolving into discord and chaos. These dramatic opposites frame the central painting, *The Arcadian or Pastoral State*, in which Cole offers an Edenic image to suggest that there exists a higher power that will prevail in the end.

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The artistic techniques used by the artists in the Hudson River School derived from European landscape painting, especially French and Dutch. The portrayal of the sublime and the development of the picturesque originated in Europe as early as the seventeenth century, with Salvator Rosa and Claude Lorrain. In comparison with its European counterpart, the art of the Hudson River School lacks technical depths, but the constant lesson-teaching—the relentless foregrounding, as it were, of the moral and historical tinge—was strictly an American phenomenon.

The European vision of art, however, won as the twentieth century progressed. Increasingly, we came to see the artist as a rebel against fundamental beliefs, and the result, Cooper argues, is the corrosion of art. Losing its mission to convey moral absolutes, art became distanced from the American people. Of course, art cannot, in fact, entirely cease to attempt to convey absolutes, but art in the twentieth century came to see those absolutes as either pure politics or "pure art"—both somehow divorced from beauty and moral virtue.

Cooper, the editor of a small but innovative art journal, the *American Arts Quarterly*, has put together a fascinating and important study with *Knights of the Brush*. What is not entirely clear in his work, however, is the presumption that art offers the cultural salvation he desires. The flaw is not so much in what Cooper says as what he fails to say. He argues that Americans can undergo a "cultural renewal" by inducing a sort of Great Awakening in the arts, but how exactly can good *popular* art precede good culture?

This is a question in part about the depth to which the corrupt definition of the artist as rebel has penetrated the general culture. And it is in part a question of the success of race, class, and gender analysis in making traditional values seem not just out of date but actually *evil*. Even more, however, it is a question about what the role of art ought to be. Cooper and his conservative supporters would like to see art help mold a more virtuous society—and they may be right. Yet, before we can entirely agree, we need considerable explanation of why art's purpose should be to reform moral conscience or to force a people to question their existing cultural constructs.

Indeed, if the anti-moral art of the twentieth century has had the effect that Cooper ascribes to it in fully corrupting the culture, a new moral art cannot succeed in promoting the virtues now lost. The Hudson River School arose when artists perceived appreciation for America and the deeper values in life fading from mainstream culture—fading, but not yet gone. There is a reason, as Cooper observes in his introduction, that the art of the Hudson River School made a comeback during the gloom of the Great Depression as well as during World War II, periods when citizens needed reminders of America's dignity and greatness.

In Cooper's view, the end of the twentieth century is another depression—this time of a moral and cultural sort. But to what lingering moral sense will our new moral artists appeal in the midst of this new depression?

The work of the Hudson River School may not be the model for a new art that Cooper thinks it is, for the artists of that school had to face only the decay, and not the destruction, of the moral sense. We may need a better culture to have a better art. Unless, against all odds, Cooper proves right about the power of art to restore culture, any modern attempt at moral art is likely to be tinged, as the Hudson River School was tinged, primarily with sadness. ♦

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BERNARD SHAW: CNN and *Time* have extended the same invitation to the Republican presidential candidates to have an Apollo Theater debate. (Hooting and laughter ensue.) —*Gore/Bradley Debate, Apollo Theater, Harlem, February 21, 2000*

SHAW: Another question for the Senator. At a time of racial tension, your use of an epithet...

McCAIN: Gook? Well, it's like the word ho'. Sure it's a term of abuse. But Ho Chi-Minh was a ho'! I'm not going to mince words about it. That's why we called him Ho. His own friends called him Ho. I'll bet his mother was a Ho, too. Ha ha ha ha ha ha ha ha! Excuse me. Kind of like "How Long is a Chinaman?" Ha ha! If I can just say, Bernie, there wasn't a lot of racial tension in my bamboo cage in Vietnam.

SHAW: Now we're going to a question from the Internet. Governor **Bush**, when you appeared at Bob Jo...

BUSH: Hey. The thing. Anyone who knows me. Nothing anti-black. Gardener was black. Uniter, not a divider. My gardener at the house. Sam -- or Rufus, I think. No, definitely Sam. That's the way I am, Bernie. Like I've said all along. If some people don't like -- well, hey. Nice guy, Sam. Black guy. Mexicans? My brother, too. Columba his wife. And keep a close eye on Russia's transition to democracy. Another good point to make if you can slip it in.

KEYES: This is an example of the post-hoc-ergo-propter-hoc casuistry of what Montesquieu...

SHAW: Ambassador **Keyes**, a question from the audience. Racial pro...

KEYES: Exactly. As I was saying before you cut me off with the rudeness that is a hallmark, Mr. Shaw, of your own base parentage, this is an example of the post-hoc-ergo-propter-hoc casuistry of what Montesquieu called *"un peuple qui ne connait pas soi-même."* One cannot countenance it. One cannot read Wittgenstein's notions of unknowability into Mill's of the greater good without desiccating in perpetuum the coruscating bounty of good faith that is the mighty current of the American good. It is this that has made a wasteland of Harlem. Wynton Marsalis indeed! And you should be as ashamed, Mr. Shaw, of that line of interrogation as my fellow candidates should be at the debility of their ripostes, indeed as the entire audience tonight should be for watching it.

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Global Perils in Perspective

Robert Conquest is a senior research fellow and scholar-curator of the Russian and Commonwealth of Independent States Collection at the Hoover Institution.

War, revolution, and peace are the themes to which the Hoover Institution, of which I am a fellow, is formally dedicated. The first two are what we cope with. The last is what we hope and work for; it now prevails over a large, but by no means as yet decisive, part of the earth.

Revolution, in the extreme twentieth-century sense of the seizure of power by a fanatic ideological group, has largely faded. But we do see destructive revolutions fueled by lesser aims, and the heirs of the old totalitarian revolutions remain in power in a number of untrustworthy countries, some of them equipped with nuclear weapons.

As for war, minor wars keep breaking out and the threat of larger and worse conflicts still looms.

From the knowledge accumulated on the background and history of the world, what have we learned? We can certainly see that the lessons have not been properly attended to—in part because of Western failure to see that the necessary education is given to our citizens and politicians.

What, then, are the lessons that need learning? First, history is an immensely complex weave of facts and forces that produces unforeseeable concatenations, especially so in what has become a global, and thus even more complex, perspective. We must cover what may appear to us now as unlikely eventualities.

Another major lesson from history is that powerful human beings and movements have acted irrationally, both in the sense that they harbored insane ideas and in the sense that they miscalculated and misunderstood the motives and intentions of others.

The world will not be safe unless the open society, and nations not possessed by modern fanaticisms and archaic enmities, prevails everywhere. Clearly the largely Western political culture is the hope and can be the core of such a development.

But the necessary elements of the Western-style political and economic order do not emerge easily among culturally dissimilar populations. That order requires not only sound institutions and the rule of law but also the development of pluralist habits of mind.

The conclusions to be drawn from the century's history are, one would have thought, unavoidable. We can have no lasting and stable world peace until the conditions prevailing in, and between, the advanced democratic countries are established everywhere. Meanwhile, our tasks are not merely to provide a pluralist model but also to see that the superior technology so far achieved be used in defense of our present and the world's future. Military and political necessity dictates that the Western, and especially the American, lead in defense technology be not only maintained at the research level but actually deployed in weapons systems of a type and quantity that even the most ideology-crazed rulers cannot underestimate. At the same time, our foreign policy must be conducted in a manner they cannot misunderstand.

A truly crucial corollary is that the United States should not be inveigled into committing itself to attractive-sounding, but worthless or actively deleterious, arms treaties that other signatories in any case have no intention of observing.

— Robert Conquest

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